

# 2021

# ILLINOIS

## REGISTER

Rules of  
Governmental Agencies



Volume 45, Issue 52

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## TABLE OF CONTENTS

December 27, 2021 Volume 45, Issue 52

### PROPOSED RULES

#### BOARD OF BOILER AND PRESSURE VESSEL RULES

##### Boiler and Pressure Vessel Safety

41 Ill. Adm. Code 2120.....16118

#### COMMERCE COMMISSION, ILLINOIS

##### Electric Interconnection of Distributed Generation Facilities (Withdrawal)

83 Ill. Adm. Code 466.....16127

#### HEALTHCARE AND FAMILY SERVICES, DEPARTMENT OF

##### Special Eligibility Groups

89 Ill. Adm. Code 118.....16128

#### INSURANCE, DEPARTMENT OF

##### Infertility Coverage

50 Ill. Adm. Code 2015.....16140

##### Notice of Non-Compliance with Workers' Compensation Act

50 Ill. Adm. Code 2915.....16150

#### LIQUOR CONTROL COMMISSION, ILLINOIS

##### The Illinois Liquor Control Commission

11 Ill. Adm. Code 100.....16154

#### PUBLIC HEALTH, DEPARTMENT OF

##### Practice and Procedure in Administrative Hearings

77 Ill. Adm. Code 100.....16176

##### Home Health, Home Services, and Home Nursing Agency Code

77 Ill. Adm. Code 245.....16210

##### Sexual Assault Survivors Emergency Treatment Code

77 Ill. Adm. Code 545.....16259

##### Health Care Worker Background Check Code

77 Ill. Adm. Code 955.....16292

#### STATE POLICE, ILLINOIS DEPARTMENT OF

##### Firearms Owner's Identification Card Act

20 Ill. Adm. Code 1230.....16315

### ADOPTED RULES

#### FINANCIAL AND PROFESSIONAL REGULATION, DEPARTMENT OF

##### Cannabis Regulation and Tax Act

68 Ill. Adm. Code 1291.....16320

### EMERGENCY RULES

#### COMMERCE COMMISSION, ILLINOIS

##### Electric Interconnection of Distributed Generation Facilities

83 Ill. Adm. Code 466.....16330

##### Multi-Year Integrated Grid Plans

83 Ill. Adm. Code 475.....16338

PUBLIC HEALTH, DEPARTMENT OF	
Immunization Registry Code	
77 Ill. Adm. Code 689.....	16382
<b>SECOND NOTICES RECEIVED</b>	
JOINT COMMITTEE ON ADMINISTRATIVE RULES	
Second Notices Received.....	16400
<b>REGULATORY AGENDA</b>	
ATTORNEY GENERAL, OFFICE OF THE	
Hospital Financial Assistance under the Fair Patient Billing Act	
77 Ill. Adm. Code 4500.....	16401
POLLUTION CONTROL BOARD	
Definitions and General Provisions	
35 Ill. Adm. Code 211.....	16402
STATE UNIVERSITIES RETIREMENT SYSTEM OF ILLINOIS	
Universities Retirement	
80 Ill. Adm. Code 1600.....	16430
<b>EXECUTIVE ORDERS AND PROCLAMATIONS</b>	
EXECUTIVE ORDERS	
Executive Order 2021-32 (COVID-19 Executive Order No. 96)	
2021-32.....	16433
PROCLAMATIONS	
Family Caregivers Month	
2021-260.....	16439
Children's Grief Awareness Day	
2021-261.....	16439
National Apprenticeship Week	
2021-262.....	16440
School Psychology Week	
2021-263.....	16441
Antibiotics Awareness Week	
2021-264.....	16442
Stomach Cancer Awareness Month	
2021-265.....	16443
Gubernatorial Disaster Proclamation	
2021-266.....	16443
Gubernatorial Disaster Proclamation 2	
2021-267.....	16454

## INTRODUCTION

The *Illinois Register* is the official state document for publishing public notice of rulemaking activity initiated by State governmental agencies. The table of contents is arranged categorically by rulemaking activity and alphabetically by agency within each category.

Rulemaking activity consists of proposed or adopted new rules; amendments to or repealers of existing rules; and rules promulgated by emergency or peremptory action. Executive Orders and Proclamations issued by the Governor; notices of public information required by State Statute; and activities (meeting agendas; Statements of Objection or Recommendation, etc.) of the Joint Committee on Administrative Rules (JCAR), a legislative oversight committee which monitors the rulemaking activities of State Agencies; is also published in the Register.

The Register is a weekly update of the Illinois Administrative Code (a compilation of the rules adopted by State agencies). The most recent edition of the Code, along with the Register, comprise the most current accounting of State agencies' rulemakings.

The *Illinois Register* is the property of the State of Illinois, granted by the authority of the Illinois Administrative Procedure Act [5 ILCS 100/1-1, et seq.].

## ILLINOIS REGISTER PUBLICATION SCHEDULE FOR 2021

Issue#	Rules Due Date	Date of Issue
1	December 21, 2020	January 4, 2021
2	December 28, 2020	January 8, 2021
3	January 4, 2021	January 15, 2021
4	January 11, 2021	January 22, 2021
5	January 19, 2021	January 29, 2021
6	January 25, 2021	February 5, 2021
7	February 1, 2021	February 16, 2021
8	February 8, 2021	February 19, 2021
9	February 16, 2021	February 26, 2021
10	February 22, 2021	March 5, 2021
11	March 1, 2021	March 12, 2021
12	March 8, 2021	March 19, 2021
13	March 15, 2021	March 26, 2021
14	March 22, 2021	April 2, 2021
15	March 29, 2021	April 9, 2021
16	April 5, 2021	April 16, 2021
17	April 12, 2021	April 23, 2021
18	April 19, 2021	April 30, 2021
19	April 26, 2021	May 7, 2021
20	May 3, 2021	May 14, 2021
21	May 10, 2021	May 21, 2021

22	May 17, 2021	May 28, 2021
23	May 24, 2021	June 4, 2021
24	June 1, 2021	June 11, 2021
25	June 7, 2021	June 18, 2021
26	June 14, 2021	June 25, 2021
27	June 21, 2021	July 2, 2021
28	June 28, 2021	July 9, 2021
29	July 6, 2021	July 16, 2021
30	July 12, 2021	July 23, 2021
31	July 19, 2021	July 30, 2021
32	July 26, 2021	August 6, 2021
33	August 2, 2021	August 13, 2021
34	August 9, 2021	August 20, 2021
35	August 16, 2021	August 27, 2021
36	August 23, 2021	September 3, 2021
37	August 30, 2021	September 10, 2021
38	September 7, 2021	September 17, 2021
39	September 13, 2021	September 24, 2021
40	September 20, 2021	October 1, 2021
41	September 27, 2021	October 8, 2021
42	October 4, 2021	October 15, 2021
43	October 12, 2021	October 22, 2021
44	October 18, 2021	October 29, 2021
45	October 25, 2021	November 5, 2021
46	November 1, 2021	November 12, 2021
47	November 8, 2021	November 19, 2021
48	November 15, 2021	November 29, 2021
49	November 22, 2021	December 3, 2021
50	November 29, 2021	December 10, 2021
51	December 6, 2021	December 17, 2021
52	December 13, 2021	December 27, 2021

## BOARD OF BOILER AND PRESSURE VESSEL RULES

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Boiler and Pressure Vessel Safety
- 2) Code Citation: 41 Ill. Adm. Code 2120
- 3) 

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
2120.20	Amendment
2120.50	Amendment
- 4) Statutory Authority: Board and Pressure Vessel Safety Act [430 ILCS 75/2]
- 5) A Complete Description of the Subjects and Issues Involved: The proposed amendments would update the national technical codes incorporated by reference in these rules as required by Section 2 of the Boiler and Pressure Vessel Safety Act. 430 ILCS 75/2. The proposed amendment would also clarify that a passing score on the examination for a National Board Commission issued through the National Board shall satisfy the examination requirement for an Inspector Commission issued by the Office of the State Fire Marshal.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? Yes. A variety of codes and standards developed by independent nationally recognized associations and work groups have been incorporated and are available for public inspection at:  
  
Office of the State Fire Marshal  
1035 Stevenson Dr.  
Springfield, IL 62703-4259  
  
Facsimile: 217-785-4184
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not create or enlarge a State mandate.

## BOARD OF BOILER AND PRESSURE VESSEL RULES

## NOTICE OF PROPOSED AMENDMENTS

- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Persons wishing to comment on this proposed rulemaking may submit comments no later than 45 days after the publication of this Notice to:

Ashley Vincent  
Legal Division  
Attn: Part 2120 Rules  
Office of the State Fire Marshal  
1035 Stevenson Drive  
Springfield, IL 62703

217-785-4212  
Facsimile: 217-524-5487

- 13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: None
- B) Reporting, bookkeeping or other procedures required for compliance: No new reporting bookkeeping, or other procedures required for compliance.
- C) Types of professional skills necessary for compliance: No new professional skills required.

- 14) Small Business Impact Analysis:

- A) Types of businesses subject to the proposed rule: None
- B) Categories that the agency reasonably believes the rulemaking will impact, including: None

- 15) Regulatory Agenda on which this rulemaking was summarized: July 2021

The full text of the Proposed Amendments begins on the next page:

## BOARD OF BOILER AND PRESSURE VESSEL RULES

## NOTICE OF PROPOSED AMENDMENTS

## TITLE 41: FIRE PROTECTION

## CHAPTER III: BOARD OF BOILER AND PRESSURE VESSEL RULES

## PART 2120

## BOILER AND PRESSURE VESSEL SAFETY

## SUBPART A: DEFINITIONS AND ADMINISTRATION

Section	
2120.10	Definitions
2120.20	Incorporation of National Standards
2120.30	Fees
2120.40	Administration
2120.50	Inspectors, Examinations, Certificate of Competency and Commission

SUBPART B: CONSTRUCTION, INSTALLATION, INSPECTION,  
MAINTENANCE, AND USE

Section	
2120.100	New Installations of Boilers, Miniature Boilers, Heating Boilers and Hot Water Supply Boilers
2120.200	New Installations of Pressure Vessels
2120.300	Existing Installations of Power Boilers
2120.400	Operation of Boilers and Pressure Vessels
2120.500	Existing Installation of Pressure Vessels

## SUBPART C: REPAIR AND ALTERATION

Section	
2120.1000	Repairs and Alterations to Boilers and Pressure Vessels by Welding
2120.1010	Authorization to Repair Boilers and Pressure Vessels
2120.1020	Issuance and Renewal of the Certificate
2120.1030	Changes to Certificates of Authorization
2120.1040	Quality Control Requirements
2120.1041	Repair and Alteration Requirements

## SUBPART D: STATE SPECIALS

## Section



## BOARD OF BOILER AND PRESSURE VESSEL RULES

## NOTICE OF PROPOSED AMENDMENTS

2120.1100 Procedure for the Issuance of a State Special Permit

## SUBPART E: REPAIR OF SAFETY AND SAFETY RELIEF VALVES

## Section

2120.1200 Authorization for Repair of Safety & Safety Relief Valves  
2120.1210 Authorization to Repair ASME and National Board Stamped Safety and Safety Relief Valves  
2120.1220 Issuance and Renewal of the Certificate  
2120.1240 Changes to Certificates of Authorization  
2120.1250 Repairs to Safety and Safety Relief Valves  
2120.1260 Quality Control System  
2120.1270 Nameplates  
2120.1275 Field Repair  
2120.1280 Performance Testing of Repaired Valves  
2120.1285 Training of Valve Repair Personnel  
2120.1290 ASME "V", "UV" or National Board "VR" Certificate Holders

## SUBPART F: OWNER-USER QUALITY CONTROL REQUIREMENTS

## Section

2120.1300 Introduction  
2120.1301 Authority and Responsibility  
2120.1305 Organization  
2120.1310 Inservice Inspection Program  
2120.1320 Drawings, Design Calculations, and Specification Control  
2120.1325 Material Control  
2120.1330 Examination and Inspection Program  
2120.1335 Correction of Nonconformities  
2120.1340 Welding  
2120.1345 Nondestructive Examination  
2120.1350 Calibration of Measurement and Test Equipment  
2120.1355 Records  
2120.1360 Inspectors

## SUBPART G: HISTORICAL BOILERS

## Section

2120.1400 Scope

## BOARD OF BOILER AND PRESSURE VESSEL RULES

## NOTICE OF PROPOSED AMENDMENTS

2120.1410	Historical Boiler Definition
2120.1420	Historical Boiler Inspections
2120.1430	Fees
2120.1440	Repairs and Alterations
2120.APPENDIX A	Operational and Maintenance Log
2120.EXHIBIT A	Hot Water Heating Boilers
2120.EXHIBIT B	Steam Heating Boilers

**AUTHORITY:** Implementing the Boiler and Pressure Vessel Safety Act [430 ILCS 75] and authorized by Sections 2 and 2.1 of the Boiler and Pressure Vessel Safety Act [430 ILCS 75/2 and 2.1].

**SOURCE:** Boiler and Pressure Vessel Safety Act Rules and Regulations adopted at 4 Ill. Reg. 7, p. 126, effective January 31, 1980; codified at 5 Ill. Reg. 10677; amended at 7 Ill. Reg. 6925, effective July 1, 1983; amended at 10 Ill. Reg. 9510, effective July 1, 1985; amended at 11 Ill. Reg. 16587, effective January 1, 1988; amended at 16 Ill. Reg. 6808, effective July 1, 1992; amended at 17 Ill. Reg. 14917, effective September 1, 1993; amended at 19 Ill. Reg. 11904, effective August 15, 1995; amended at 20 Ill. Reg. 9540, effective July 3, 1996; amended at 21 Ill. Reg. 997, effective January 1, 1997; amended at 23 Ill. Reg. 162, effective January 1, 1999; amended at 24 Ill. Reg. 18555, effective December 7, 2000; amended at 25 Ill. Reg. 11914, effective January 1, 2002; amended at 27 Ill. Reg. 518, effective January 01, 2003; emergency amendment at 27 Ill. Reg. 14855, effective September 2, 2003, for a maximum of 150 days; amended at 28 Ill. Reg. 1737, effective January 13, 2004; amended at 28 Ill. Reg. 13509, effective September 24, 2004; amended at 32 Ill. Reg. 17198, effective October 16, 2008; amended at 35 Ill. Reg. 9028, effective July 1, 2011; amended at 37 Ill. Reg. 13424, effective August 1, 2013; amended at 38 Ill. Reg. 18925, effective September 4, 2014; recodified from Chapter I, 41 Ill. Adm. Code 120, to Chapter III, 41 Ill. Adm. Code 2120, at 39 Ill. Reg. 10645; amended at 41 Ill. Reg. 846, effective January 17, 2017; amended at 42 Ill. Reg. 13457, effective July 1, 2018; amended at 44 Ill. Reg. 13968, effective August 13, 2020; amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: DEFINITIONS AND ADMINISTRATION

**Section 2120.20 Incorporation of National Standards**

- a) Where standards are incorporated by reference in this Part, the incorporated material does not include any later editions or amendments.

## BOARD OF BOILER AND PRESSURE VESSEL RULES

## NOTICE OF PROPOSED AMENDMENTS

- b) The Board hereby adopts the following nationally recognized standards and addenda:

- 1) American Petroleum Institute (API)  
1220 L Street, Northwest  
Washington DC 20005

API-510, Tenth Edition, May 2014, Pressure Vessel Inspection  
Code: In-service Inspection, Rating, Repair, and Alteration; with  
Addendum 1 (May 2017) and Addendum 2 (March 2018)

- 2) American Society of Mechanical Engineers (ASME)  
United Engineering Center  
Three Park Avenue  
New York NY 10017  
[www.asme.org](http://www.asme.org)

- A) ASME Boiler and Pressure Vessel Code, [2021](#)~~2019~~ Edition

Section I	Rules for Construction of Power Boilers
Section II	Material Specifications – Part A – Ferrous
Section II	Material Specifications – Part B – Nonferrous
Section II	Material Specifications – Part C – Welding Rods, Electrodes and Filler Metals
Section II	Material Specifications – Part D – Properties (Customary)
Section IV	Rules for Construction of Heating Boilers
Section V	Nondestructive Examination
Section VI	Recommended Rules for the Care and Operation of Heating Boilers
Section VII	Recommended Guidelines for the Care of Power Boilers
Section VIII	Pressure Vessels – Division 1, Rules for Construction of Pressure Vessels (Including Appendix M)

## BOARD OF BOILER AND PRESSURE VESSEL RULES

## NOTICE OF PROPOSED AMENDMENTS

Section VIII	Pressure Vessels – Division 2 – Alternative Rules
Section VIII	Pressure Vessels – Division 3 – Alternative Rules for Construction of High Pressure Vessels
Section IX	Welding, Brazing and Fusing Qualifications
Section X	Fiberglass-Reinforced Plastic Pressure Vessels

B) ASME CSD-1 2018 – Controls and Safety Devices for Automatically Fired Boilers

- 3) National Board of Boiler and Pressure Vessel Inspectors (NB)  
1055 Crupper Avenue  
Columbus OH 43229  
[www.nationalboard.org](http://www.nationalboard.org)

National Board Inspection Code (NBIC), [2021](#)~~2019~~ Edition

- 4) National Fire Protection Association (NFPA)  
1 Batterymarch Park  
Quincy MA 02269-9101  
[www.nfpa.org](http://www.nfpa.org)

NFPA 85 Boiler and Combustion Systems Hazards Code,  
2019 Edition

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 2120.50 Inspectors, Examinations, Certificate of Competency and Commission.**

a) Examinations

- 1) Examinations for Certificate of Competency and Commission as an Inspector of Boilers and Pressure Vessels shall be held the first Wednesday of the months of March, June, September and December. Special examinations will be held when considered necessary by the Board. [A passing score on the examination for a National Board Commission issued through the National Board shall satisfy the examination requirement for an Inspector Commission issued by OSFM](#)

## BOARD OF BOILER AND PRESSURE VESSEL RULES

## NOTICE OF PROPOSED AMENDMENTS

[under this Part and Section 9 of the Boiler and Pressure Vessel Safety Act \[430 ILCS 75/9\].](#)

- 2) Applicants for examination for a Special Inspector shall have 3 years experience in the construction, maintenance, repair or operation of high pressure boilers and pressure vessels. A credit of 2 years of the required experience will be given to applicants holding a Mechanical Engineering degree from a college of engineering and one year's credit will be given for all other types of engineering degrees.
  - 3) Application for examination for Certificate of Competency and Commission shall be written upon a form to be furnished by OSFM stating the educational background of the applicant, a list of employers, period of employment and position held with each employer. Applications containing willful falsification or untruthful statements shall be rejected. If the applicant's education and experience meet the requirements of the Board, the applicant shall be given the written examination dealing with the construction, installation, operation, maintenance and repair of boilers, pressure vessels and their appurtenances. If the applicant is successful in meeting the requirements of the Board, a Certificate of Competency and Commission will be issued by OSFM. An applicant who fails to pass the examination will be notified and permitted to take another written examination.
- b) Commissions
- 1) A Commission as an Inspector and an identifying commission card shall be issued by the State Fire Marshal as provided in the Act.
  - 2) Commissions issued to inspectors in the employ of insurance companies or of owner-users shall be held at the office of the employing company. The Commission and the identifying commission card shall be returned to the Chief Inspector when suspended or revoked or the inspector to whom the Commission was issued is no longer employed by the insurance company or self-insurer.
  - 3) A Commission issued to an Inspector may be suspended or revoked by the State Fire Marshal as provided in the Act.

BOARD OF BOILER AND PRESSURE VESSEL RULES

NOTICE OF PROPOSED AMENDMENTS

- 4) Reciprocal Commissions. A Reciprocal Commission as an Inspector may be issued by the State Fire Marshal as provided in the Act.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF WITHDRAWAL OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Electric Interconnection of Distributed Generation Facilities
- 2) Code Citation: 83 Ill. Adm. Code 466
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
466.10	Amendment
466.20	Renumbered
466.30	Renumbered
466.45	Amendment
466.50	Amendment
466.60	Amendment
466.75	New Section
466.80	Amendment
466.90	Amendment
466.100	Amendment
466.110	Amendment
466.120	Amendment
466.125	New Section
466.130	Amendment
466.140	Amendment
466.APPENDIX A	Amendment
466.APPENDIX C	Amendment
466.APPENDIX D	Amendment
466.APPENDIX E	Amendment
- 4) Date Notice of Proposed Amendments Published in the *Illinois Register*: 45 Ill. Reg. 1; January 4, 2021
- 5) Reason for the Withdrawal: The agency has elected to amend Part 466 through a new rulemaking proceeding.

## DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Special Eligibility Groups
- 2) Code Citation: 89 Ill. Adm. Code 118
- 3) 

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
118.800	New Section
118.805	New Section
118.810	New Section
118.815	New Section
118.820	New Section
118.825	New Section
118.830	New Section
118.835	New Section
118.840	New Section
118.845	New Section
118.850	New Section
118.855	New Section
118.860	New Section
- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]
- 5) Complete Description of the Subjects and Issues Involved: This rulemaking implements Section 12-4.35(a-6) of the Public Aid Code that authorizes the Department to administer the Health Benefits for Immigrant Adults Program. This program provides health benefits coverage to non-citizens 55-64 who are not eligible for medical assistance receiving federal financial participation due to their immigration status. The new subpart is very similar, though not identical, to existing rules for the Health Benefits for Immigrant Seniors Program implemented in 89 Ill. Adm. Code Section 118.700s.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rule currently in effect? No
- 8) Do these rulemakings contain an automatic repeal date? No
- 9) Do these rulemakings contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No



## DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

- 11) Statement of Statewide Policy Objectives: This rulemaking will not require a local government to establish, expand, or modify its activities in such a way as to necessitate additional expenditures from local revenues.
- 12) Time, Place, and Manner in Which Interested Persons May Comment on this Proposed Rulemaking: Any interested parties may submit comments, data, views, or arguments concerning this proposed rulemaking. All comments must be in writing and should be addressed to:

Steffanie Garrett  
Acting General Counsel  
Illinois Department of Healthcare and Family Services  
201 South Grand Avenue East, 3<sup>rd</sup> Floor  
Springfield, IL 62763-0002

217/782-1233  
HFS.Rules@illinois.gov

The Department requests the submission of written comments within 45 days after the publication of this Notice. The Department will consider all written comments it receives during the first notice period as required by Section 5-40 of the Illinois Administrative Procedure Act [5 ILCS 100/5-40].

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: None
  - B) Reporting, bookkeeping or other procedures required for compliance: None
  - C) Types of professional skills necessary for compliance: None
- 14) Small Business Impact Analysis: None
- 15) Regulatory Agenda on which this Rulemaking was Summarized: July 2021

The full text of the Proposed Amendments begins on the next page:

## DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

## TITLE 89: SOCIAL SERVICES

## CHAPTER I: DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

## SUBCHAPTER b: ASSISTANCE PROGRAMS

## PART 118

## SPECIAL ELIGIBILITY GROUPS

## SUBPART A: DISABLED ADULT CHILDREN

## Section

118.100 Disabled Adult Children

SUBPART B: PERSONS WITH ACQUIRED IMMUNODEFICIENCY  
SYNDROME (AIDS) OR AIDS RELATED COMPLEXES (ARC)

## Section

118.150 Continuation of Health Insurance Coverage

118.200 Drugs to Prolong the Lives of Persons With Acquired Immunodeficiency  
Syndrome (AIDS) or AIDS Related Complexes (ARC)

## SUBPART C: WIDOWS AND WIDOWERS

## Section

118.300 Widows and Widowers

## SUBPART D: MISCELLANEOUS PROGRAM PROVISIONS

## Section

118.400 Incorporation By Reference

## SUBPART E: CERTAIN NON-CITIZEN CHILDREN

## Section

118.500 Medical Services for Certain Non-Citizen Children

## SUBPART F: FAMILYCARE ELIGIBILITY

## Section

118.600 Limited FamilyCare Expansion (Repealed)

## DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

## SUBPART G: HEALTH BENEFITS FOR IMMIGRANT SENIORS

Section	
118.700	General Description
118.705	Definitions
118.710	Eligibility
118.715	Eligibility Exclusions and Terminations
118.720	Application Process
118.725	Determination of Monthly Countable Income
118.730	Eligibility Determination and Enrollment Process
118.735	Appeals
118.740	Renewals of Eligibility
118.745	Covered Services
118.750	Service Exclusions
118.755	Provider Reimbursement
118.760	Program Limitations

SUBPART H: HEALTH BENEFITS FOR IMMIGRANT ADULTS

<u>Section</u>	
<u>118.800</u>	<u>General Description</u>
<u>118.805</u>	<u>Definitions</u>
<u>118.810</u>	<u>Eligibility</u>
<u>118.815</u>	<u>Eligibility Exclusions and Terminations</u>
<u>118.820</u>	<u>Application Process</u>
<u>118.825</u>	<u>Determination of Monthly Countable Income</u>
<u>118.830</u>	<u>Eligibility Determination and Enrollment Process</u>
<u>118.835</u>	<u>Appeals</u>
<u>118.840</u>	<u>Renewals of Eligibility</u>
<u>118.845</u>	<u>Covered Services</u>
<u>118.850</u>	<u>Service Exclusions</u>
<u>118.855</u>	<u>Provider Reimbursement</u>
<u>118.860</u>	<u>Program Limitations</u>

AUTHORITY: Implementing Articles III, IV, V, VI and Section 5-18 and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5].

## DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

SOURCE: Emergency rule adopted at 12 Ill. Reg. 3037, effective January 15, 1988, for a maximum of 150 days; adopted at 12 Ill. Reg. 6301, effective March 18, 1988; amended at 12 Ill. Reg. 8068, effective April 26, 1988; amended at 13 Ill. Reg. 3950, effective March 10, 1989; amended at 14 Ill. Reg. 10442, effective June 20, 1990; emergency amendment at 15 Ill. Reg. 8708, effective June 1, 1991, for a maximum of 150 days; amended at 16 Ill. Reg. 11607, effective July 15, 1992; emergency amendment at 17 Ill. Reg. 11217, effective July 1, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 19956, effective November 12, 1993; amended at 19 Ill. Reg. 7959, effective June 5, 1995; emergency amendment at 22 Ill. Reg. 15724, effective August 12, 1998, for a maximum of 150 days; amended at 23 Ill. Reg. 562, effective December 24, 1998; recodified from Department of Public Aid to the Department of Healthcare and Family Services at 29 Ill. Reg. 5601, effective July 1, 2005; emergency amendment at 30 Ill. Reg. 10129, effective May 17, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 16966, effective October 13, 2006; emergency amendment at 33 Ill. Reg. 10780, effective June 30, 2009, for a maximum of 150 days; amended at 33 Ill. Reg. 15702, effective November 2, 2009; emergency amendment at 36 Ill. Reg. 10223, effective July 1, 2012 through June 30, 2013; amended at 37 Ill. Reg. 10201, effective June 27, 2013; emergency amendment at 38 Ill. Reg. 19799, effective October 1, 2014, for a maximum of 150 days; emergency expired February 27, 2015; amended at 44 Ill. Reg. 19684, effective December 11, 2020; amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART H: HEALTH BENEFITS FOR IMMIGRANT ADULTSSection 118.800 General Description

This Subpart implements Section 12-4.35(a-6) of the Code that authorizes the Department to administer in Illinois the Health Benefits for Immigrant Adults Program to certain non-citizens who are not eligible for medical assistance receiving federal financial participation due to immigration status.

(Source: Added at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 118.805 Definitions

For the purposes of this Subpart, the following terms have the meanings ascribed in this Section:

"Code" means the Public Aid Code [305 ILCS 5].

"Department" means the Department of Healthcare and Family Services and any successor agencies.

## DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

"FPL" means the federal poverty income guidelines established by the federal Department of Health and Human Services and published in the Federal Register.

"Health Benefits for Immigrant Adults or "Program" means the Program authorized by Section 12-4.35(a-6) of the Code and created by this Subpart.

"Resident" means an individual who has an Illinois residence, as established in Section 5-3 of the Code.

"Medical assistance receiving federal financial participation" does not include emergency medical for certain non-citizens.

(Source: Added at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 118.810 Eligibility**

An individual may be eligible for Health Benefits for Immigrant Adults provided that all of the following eligibility criteria are met:

- a) The individual is not eligible for medical assistance receiving federal financial participation other than emergency medical for certain non-citizens;
- b) The individual is not:
  - 1) A U.S. citizen; or
  - 2) A person:
    - A) Lawfully admitted for permanent residence under the Immigration and Nationality Act (INA); and
    - B) Who has lawfully resided in the United States for five years or more;
- c) The individual is a resident of the State of Illinois;
- d) The individual is 55-64 years of age;

## DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

- e) The individual's income is at or below 138% FPL as determined in accordance with 89 Ill. Adm. Code 120.64;
- f) The individual cooperates in establishing eligibility (see 89 Ill. Adm. Code 120.308); and
- g) The individual assigns rights to medical support and collection of payment (see 89 Ill. Adm. Code 120.319).

(Source: Added at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 118.815 Eligibility Exclusions and Terminations**

- a) Coverage of medical services under this Subpart for Inmates of public institutions shall be consistent with 89 Ill. Adm. Code 120.318 and other applicable law.
- b) An individual's coverage under the Program shall be terminated if the individual:
  - 1) No longer qualifies as an Illinois resident;
  - 2) Becomes eligible for medical assistance under the Public Aid Code that receives federal financial participation;
  - 3) Fails to report to the Department changes that affect eligibility for the Program;
  - 4) Asks the Department to terminate the coverage;
  - 5) Is no longer eligible based on any other applicable State or federal law or regulation;
  - 6) Failed to provide eligibility information that was truthful and accurate to the best of the individual's knowledge and belief and that affected the individual's eligibility;
  - 7) Was incorrectly determined eligible; or
  - 8) Fails to complete the redetermination of eligibility within the required timeframes or provide proof of on-going eligibility.

## DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

- c) Following termination of an individual's coverage under the Program, the following action is required before the individual can be re-enrolled:
- 1) A new application is completed and submitted, or an existing application or case is reopened, and the individual is determined otherwise eligible; and
  - 2) The individual cooperates with the Department to meet the prescribed timeframes regarding a determination of eligibility found in 305 ILCS 5/11-5.1(a)(2) and 89 Ill. Adm. Code 120.308(h).
- d) If the Department determines the individual's exclusion or termination was in error, the individual can be re-enrolled.

(Source: Added at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 118.820 Application Process**

- a) Individuals apply for the Program by submitting an application through any available method (see 89 Ill. Adm. Code 110.5), including on-line at ABE.illinois.gov (Illinois Application for Benefits Eligibility), by mail, in person, by phone, or another method. The Department may designate entities that may assist individuals to submit applications.
- b) The application shall meet all requirements of 89 Ill. Adm. Code 110.10 (Application for Medical Assistance), including provisions regarding who may apply on behalf of the individual.
- c) Applicants are obligated to provide truthful and accurate information for determining eligibility and to promptly report any change in information provided on the application.
- d) The Department may cease enrollment and deny applications that meet the eligibility requirements of this Subpart if the Department determines this action is necessary to maintain the cost of the Program within the available funding.

(Source: Added at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

**Section 118.825 Determination of Monthly Countable Income**

Income will be determined in the manner described in 89 Ill. Adm. 120.64(i) and other applicable provisions in 89 Ill. Adm. 120.64.

(Source: Added at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 118.830 Eligibility Determination and Enrollment Process**

- a) The applicant's eligibility for medical assistance receiving federal financial participation will be considered as a part of the eligibility determination process for this Program.
- b) If the monthly countable income is at or below 138% FPL in accordance with 89 Ill. Adm. Code 120.64, the application will be approved if all other factors of eligibility under Section 118.810 are met.
- c) Applicants will be notified, in writing, regarding the outcome of their eligibility determination.
- d) Eligibility will be redetermined at least annually.
- e) Individuals may obtain backdated medical coverage for up to three months prior to the month of application unless the individual does not meet all eligibility requirements for one or more backdated months.

(Source: Added at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 118.835 Appeals**

- a) Any person who applies for or receives benefits under the Program shall have the right to appeal any of the following actions:
  - 1) Refusal to accept, or failure to act on, an application or reapplication;
  - 2) Denial of an application or cancellation at the redetermination of eligibility, including denial based on failure to meet one or more of the eligibility requirements specified in this Subpart.



## DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

- A) No eligibility exists during the appeal process.
  - B) If the appeal is upheld, the individual will have the opportunity to receive coverage back to the original application date, including possible backdated months or the cancellation month;
- 3) Termination of coverage based on failure to continue to meet one or more of the eligibility requirements specified in this Subpart.
  - A) If the termination is not upheld on appeal, coverage under the Program shall be reinstated retroactive to the termination date.
  - B) The individual may choose coverage for all or some of the months during the appeal process as long as the retroactive months are consecutive to the new initial month of regular eligibility.
- 4) Individuals or their representatives do not have the right to appeal Department decisions necessary to keep the cost of the Program within the annual appropriations, such as a Department decision to:
  - A) Deny an application due to closing of enrollment for the Program;
  - B) Make a change to the Program pursuant to Section 118.860; and
  - C) Require more frequent redeterminations of eligibility.
- b) In addition to the actions that are appealable under subsection (a), individuals shall have the right to appeal any of the following actions:
  - 1) Denial of payment for a medical service or item that requires prior approval; or
  - 2) Decision granting prior approval for a lesser or different medical service or item than was originally requested.
- c) Individuals may initiate the appeal process by submitting a request for appeal to the Department's Bureau of Administrative Hearings.

## DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

- d) The request for a hearing may be filed by the individual affected by the action or by the individual's authorized representative.
- e) For purposes of initiating the appeal process, a copy of a written, signed request for a hearing is considered the same as the original written, signed request.
- f) The request for a hearing must be filed no later than 60 days after notice of the appealable action has been given.
- g) The provisions of 89 Ill. Adm. Code 104.Subpart A (Practice in Administrative Hearings) shall govern the handling of appeals and the conduct of hearings under the Program.
- h) An individual can, prior to a decision being rendered on the appeal, reapply for the Program.

(Source: Added at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 118.840 Renewals of Eligibility**

- a) Prior to the eligibility period ending, and in sufficient time for the individual to respond to the Department's request for information, the Department or its designee will send an annual renewal notice to the individual. Failure to respond to the renewal notice when required may result in termination.
- b) Renewals shall be subject to all eligibility requirements and exclusions set forth in this Subpart, including Sections 118.810, 118.815, 118.825 and 118.830.
- c) The Department may require renewal of eligibility more frequently than annually if necessary to keep spending within available funding.

(Source: Added at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 118.845 Covered Services**

Services available to the population covered in this Subpart shall be consistent with the services covered under section 118.745 of Subpart G.

(Source: Added at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

**Section 118.850 Service Exclusions**

The following services shall not be covered under this Subpart:

- a) Funeral and burial expenses.
- b) Pursuant to Section 12-4.35(b) of the Code, health care services excluded under section 118.750 of Subpart G shall be excluded from this Subpart, unless it is determined by the Department that Section 12-4.35(b) is not applicable.

(Source: Added at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 118.855 Provider Reimbursement**

- a) Provider participation under this Subpart shall be subject to enrollment with, and approval by, the Department.
- b) Providers shall be reimbursed in accordance with the established rates of the Department or other appropriate State agency.
- c) Providers under this Subpart shall be prohibited from billing individuals covered under this Program for any difference between the charge amount and the amount paid by the Department.

(Source: Added at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 118.860 Program Limitations**

There is no entitlement to medical services under this Subpart and those services are available only to the extent that payments made for individuals eligible under this Subpart do not exceed the funding available for this Program. The Department may take any action it deems necessary to assure payments for this Program do not exceed available funding, including but not limited to: ceasing or limiting enrollment, changing standards of eligibility that are not statutorily required, changing enrollment practices, changing eligibility time periods, and reducing available medical services.

(Source: Added at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF INSURANCE

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Infertility Coverage
- 2) Code Citation: 50 Ill. Adm. Code 2015
- 3) 

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
2015.20	Amendment
2015.30	Amendment
2015.35	Amendment
2015.43	Amendment
2015.50	Amendment
2015.60	Amendment
- 4) Statutory Authority: Implementing Sections 356m and 356z.32 of the Illinois Insurance Code [215 ILCS 5] and Section 5-3 of the Health Maintenance Organization Act [215 ILCS 125] and authorized by Section 401 of the Illinois Insurance Code [215 ILCS 5].
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking is initiated to conform with statutory mandates contained in Sections 356m, 356z.4a and 356z.32 of the Illinois Insurance Code [215 ILCS 5/356m, 5/356z.4a, and 5/356z.32]. The rules to be amended deal with coverage for infertility, as well as exceptions for fertility preservation services and abortion.

The proposed amendments adopt the broader definition of "infertility" in Section 356m.

The proposals also reflect the statute's broadened required coverage for oocyte retrievals from In Vitro Fertilization, Gamete Intrafallopian Tube Transfer or Zygote Intrafallopian Tube Transfer to include instances when an individual is unable to attain or maintain a viable pregnancy after using less costly fertility treatments.

Per 215 ILCS 5/356z.32, the proposed amendments also clarify that policy exclusions must not apply to cryopreservation and storage of sperm, oocytes, and embryos, when a covered individual is to undergo medical treatment which may directly or indirectly cause the person to become infertile.

Due to the protection of coverage in 215 ILCS 5/356m(d) pertaining to fertility services provided by or to a third party, exclusions also must not apply to fertility services provided to surrogates until the sperm or embryos have been transferred into the surrogate. Unique limitations on coverage for the diagnosis and treatment of infertility and for standard fertility preservation services are also prohibited.

## DEPARTMENT OF INSURANCE

## NOTICE OF PROPOSED AMENDMENTS

Additionally, the proposed amendments remove abortion as a generally allowable exclusion pursuant to 215 ILCS 5/356z.4a.

Finally, the proposed amendments make housekeeping changes to use gender neutral language where possible in order to ensure consistency with the Department's recent amendments to 50 Ill. Adm. Code 2603.35(a)(6), which specified forms of gender identity discrimination prohibited under State law. See 44 Ill. Reg. 13352 (eff. Jul. 31, 2020).

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: For the revision to 50 Ill. Adm. Code 2015.60(c), we consulted the following sources:

Ethics Committee of the American Society for Reproductive Medicine, Fertility preservation and reproduction in patients facing gonadotoxic therapies: an Ethics Committee opinion, 110 Fertility and Sterility 380 (2018). PDF available at: [https://www.asrm.org/globalassets/asrm/asrm-content/news-and-publications/ethics-committee-opinions/fertility\\_preservation\\_and\\_reproduction\\_patients\\_facing\\_gonadotoxic\\_therapy.pdf](https://www.asrm.org/globalassets/asrm/asrm-content/news-and-publications/ethics-committee-opinions/fertility_preservation_and_reproduction_patients_facing_gonadotoxic_therapy.pdf).

Kutluk Oktay, Brittany E. Harvey, Ann H. Partridge, Gwendolyn P. Quinn, Joyce Reinecke, Hugh S. Taylor, W. Hamish Wallace, Erica T. Wang, and Alison W. Loren, *Fertility Preservation in Patients With Cancer: ASCO Clinical Practice Guideline Update*, 36 Journal of Clinical Oncology 1994 (2018). Available at: <https://ascopubs.org/doi/full/10.1200/JCO.2018.78.1914>.

- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking will not require a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.

## DEPARTMENT OF INSURANCE

## NOTICE OF PROPOSED AMENDMENTS

- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to comment on this proposed rulemaking may submit written comments no later than 45 days after the publication of this Notice to:

Robert Planthold  
Acting Deputy General Counsel  
Illinois Department of Insurance  
122 S. Michigan Ave., 19<sup>th</sup> Floor  
Chicago, IL 60603

or Susan Anders  
Rules Coordinator  
Illinois Department of Insurance  
320 W. Washington St., 4<sup>th</sup> Floor  
Springfield, IL 62767

312-814-5445

217-558-0957

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: None
  - B) Reporting, bookkeeping or other procedures required for compliance: None
  - C) Types of professional skills necessary for compliance: None
- 14) Small Business Impact Analysis: The Department determined that the rulemaking will not have an adverse impact on small businesses.
- 15) Regulatory Agenda on which this rulemaking was summarized: January 2021

The full text of the Proposed Amendments begins on the next page:

## DEPARTMENT OF INSURANCE

## NOTICE OF PROPOSED AMENDMENTS

## TITLE 50: INSURANCE

## CHAPTER I: DEPARTMENT OF INSURANCE

## SUBCHAPTER z: ACCIDENT AND HEALTH INSURANCE

## PART 2015

## INFERTILITY COVERAGE

## Section

2015.10	Purpose
2015.20	Applicability and Scope
2015.30	Definitions
2015.35	Benefit Limitation/Oocyte Retrieval Limitation
2015.40	Oocyte Retrieval Limitation (Repealed)
2015.43	Donor Expenses
2015.50	Minimum Benefit Standards
2015.60	Permissible Exclusions

AUTHORITY: Implementing Sections 356m and 356z.32 of the Illinois Insurance Code [215 ILCS 5] and Section 5-3 of the Health Maintenance Organization Act [215 ILCS 125] and authorized by Section 401 of the Illinois Insurance Code [215 ILCS 5].

SOURCE: Adopted at 17 Ill. Reg. 8170, effective May 20, 1993; amended at 28 Ill. Reg. 12992, effective September 9, 2004; amended at 34 Ill. Reg. 2811, effective February 11, 2010; amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 2015.20 Applicability and Scope**

This Part shall apply to all group accident and health insurance policies and health maintenance organization group contracts that are issued, amended, delivered or renewed in this State on or after the effective date of this Part which provide pregnancy-related benefits for employees of an employer which has more than 25 full-time employees at the time of issue or renewal thereof. This Part does not apply to any coverage or policy that provides an excepted benefit, as that term is defined in Section 2791(c) of the federal Public Health Service Act (42 U.S.C. 300gg-91), to the extent provided in Section 352b of the Code.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 2015.30 Definitions**

## DEPARTMENT OF INSURANCE

## NOTICE OF PROPOSED AMENDMENTS

For purposes of this Part and Section 356m of the Code:

"Artificial ~~insemination~~Insemination" or "AI" means the introduction of sperm into ~~an individual's~~a woman's vagina or uterus by noncoital methods, for the purpose of conception.

"Assisted ~~reproductive technologies~~Reproductive Technologies or ART means treatments and/or procedures in which the human oocytes and/or sperm are retrieved and the human oocytes and/or embryos are manipulated in the laboratory. ART shall include prescription drug therapy used during the cycle where an oocyte retrieval is performed.

"Code" means the Illinois Insurance Code [215 ILCS 5].

"Donor" means an oocyte donor or a sperm donor.

"Embryo" means a fertilized egg that has begun cell division and has completed the pre-embryonic stage.

"Embryo ~~transfer~~Transfer means the placement of the pre-embryo into the uterus or, in the case of zygote intrafallopian tube transfer, into the fallopian tube.

"Gamete" means a reproductive cell, which is either a sperm or an egg (ovum).~~In a man, the gametes are sperm; in a woman, they are eggs or ova.~~

"Gamete ~~intrafallopian tube transfer~~Intrafallopian Tube Transfer or GIFT means the direct transfer of a sperm/egg mixture into the fallopian tube. Fertilization takes place inside the tube.

"Infertility" has the meaning ascribed in Section 356m(c) of the Code.~~means the inability to conceive after one year of unprotected sexual intercourse or the inability to sustain a successful pregnancy. For purposes of this Part, a woman shall be considered infertile without having to engage in one year of unprotected sexual intercourse if a physician determines that:~~

~~a medical condition exists that renders conception impossible through unprotected sexual intercourse, including but not limited to congenital absence of the uterus or ovaries, absence of the uterus or ovaries due to surgical removal due to a medical~~



## DEPARTMENT OF INSURANCE

## NOTICE OF PROPOSED AMENDMENTS

~~condition, or involuntary sterilization due to chemotherapy or radiation treatments; or~~

~~efforts to conceive as a result of one year of medically based and supervised methods of conception, including artificial insemination, have failed and are not likely to lead to a successful pregnancy.~~

"Infertility coverage" ~~Coverage~~ means insurance or health maintenance organization coverage required by Section 356m of the ~~Code~~ Illinois Insurance Code [215 ILCS 5/356m] for the diagnosis and treatment, including prescription drug therapy, of infertility.

"In vitro fertilization" ~~Vitro Fertilization~~ or "IVF" means a process in which an egg and sperm are combined in a laboratory dish where fertilization occurs. The fertilized and dividing egg is transferred into the individual's ~~woman's~~ uterus.

"Low tubal ovum transfer" ~~Tubal Ovum Transfer~~ means the procedure in which oocytes are transferred past a blocked or damaged section of the fallopian tube to an area closer to the uterus.

"Oocyte" means the ~~female~~-egg or ovum, formed in an ovary.

"Oocyte donor" ~~Donor~~ means an individual ~~a woman~~ determined by a physician to be capable of donating eggs in accordance with the standards recommended by the American Society for Reproductive Medicine.

"Oocyte retrieval" ~~Retrieval~~ means the procedure by which eggs are obtained by inserting a needle into the ovarian follicle and removing the fluid and the egg by suction. This is also ~~Also~~ called ova aspiration. Oocyte retrieval is included, for example, in the procedures for GIFT, IVF, and ZIFT.

"Pregnancy Related Benefit" means benefits that cover any related medical condition that may be associated with pregnancy, including complications of pregnancy.

"Surrogate" means an individual ~~a woman~~ who carries a pregnancy for the benefit of the individual ~~a woman~~ who has infertility coverage.

## DEPARTMENT OF INSURANCE

## NOTICE OF PROPOSED AMENDMENTS

"Unprotected sexual intercourse"~~Sexual Intercourse~~ should include appropriate measures to ensure the health and safety of sexual partners and means, with respect to infertility benefits, sexual union involving the insertion of a penis into a partner's vagina,~~between a male and a female~~, without the use of any process, device or method that prevents conception, including but not limited to oral contraceptives, chemicals, physical or barrier contraceptives, natural abstinence or voluntary permanent surgical procedures. Without limiting any person's actual or perceived gender identity, the term "woman" in Section 356m(c)(1) of the Code refers to the sexual partner with the vagina for purposes of this definition.

"Uterine embryo lavage"~~Embryo Lavage~~ means a procedure by which the uterus is flushed to recover a preimplantation embryo.

"Zygote" means a fertilized egg before cell division begins.

"Zygote intrafallopian tube transfer"~~Intrafallopian Tube Transfer~~ or "ZIFT" means a procedure by which an egg is fertilized in vitro and the zygote is transferred to the fallopian tube at the pronuclear stage before cell division takes place. The eggs are harvested and fertilized on one day and the embryo is transferred at a later time.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 2015.35 Benefit Limitation/Oocyte Retrieval Limitation**

- a) For treatments that include oocyte retrievals, coverage ~~for such treatments~~ shall be required ~~only~~ if the covered individual has been unable to attain a viable pregnancy, maintain a viable pregnancy, or sustain a successful pregnancy through reasonable, less costly medically appropriate infertility treatments for which coverage is available under the policy, plan, or contract. This requirement shall be waived in the event that the covered individual or partner has a medical condition that renders the less costly treatments~~such treatment~~ useless.
- b) For treatments that include oocyte retrievals, coverage ~~for such treatments~~ is not required if the covered individual has already undergone four completed oocyte retrievals, except that if a live birth follows a completed oocyte retrieval, then coverage shall be required for a maximum of two additional completed oocyte retrievals. Such coverage applies to the covered individual per lifetime of that individual, for treatment of infertility, regardless of the source of payment.

## DEPARTMENT OF INSURANCE

## NOTICE OF PROPOSED AMENDMENTS

- 1) Following the final completed oocyte retrieval for which coverage is available, coverage for one subsequent procedure used to transfer the oocytes or sperm to the covered recipient or to a surrogate shall be provided.
- 2) The policy or contract may provide a maximum number of completed oocyte retrievals for which the covered individual is~~that shall be~~ eligible for coverage, which must be at least~~is~~ six.
- c) When the maximum number of completed oocyte retrievals has been achieved, except as provided by subsection (b)(1) above, infertility benefits required under this Part shall be exhausted except with respect to the transfer of retrieved oocytes to the covered recipient or a surrogate. However, nothing in this Part shall limit the coverage required by Section 356z.32 of the Code.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 2015.43 Donor Expenses**

- a) The medical expenses of ~~an oocyte or sperm~~ donor for procedures utilized to retrieve oocytes or sperm, and the subsequent procedure used to transfer the oocytes or sperm to the covered recipient or to the surrogate shall be covered. Associated donor medical expenses, including but not limited to physical examination, laboratory screening, psychological screening, and prescription drugs, shall also be covered if established as prerequisites to donation by the insurer.
- b) No group accident and health policy or health maintenance organization group contract which provides coverage as required by this Part shall exclude coverage for a known donor. In the event the insured or member does not have arrangements with a known donor, the health plan may require the use of a contracted facility. If the insured or member uses a known donor, the health plan may require the use of contracted providers by the donor for all medical treatment including, but not limited to, testing, prescription drug therapy and ART procedures, if benefits are contingent upon the use of such contracted providers.

## DEPARTMENT OF INSURANCE

## NOTICE OF PROPOSED AMENDMENTS

- c) If an oocyte donor is used, then the completed oocyte retrieval performed on the donor shall count against the insured or member as one completed oocyte retrieval under Section 2015.35(b).

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 2015.50 Minimum Benefit Standards**

All diagnosis and treatment for infertility, including ART, shall be covered the same as any other illness or condition under the contract. Except as provided in this Part and permitted under Section 356m of the Code, a unique copayment, coinsurance, or deductible, benefit maximum, waiting period, exclusion, restriction, or other limitation shall not be applied to the coverage for the diagnosis or treatment of infertility, including, but not limited to, ART or prescription drug therapy, nor to the coverage for standard fertility preservation services required under Section 356z.32 of the Code. If the policy or contract does not contain a prescription drug benefit, then one shall be established solely for coverage of prescription drug therapies for infertility. Except as otherwise provided in this Part, infertility coverage shall include services to a surrogate and to a covered individual or the covered individual's donor when a surrogate is arranged.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 2015.60 Permissible Exclusions**

- a) Reversal of voluntary sterilization; however, in the event a voluntary sterilization is successfully reversed, infertility benefits shall be available if the covered ~~individual~~individual's diagnosis meets the definition of "infertility" as set forth in Section 2015.30 of this Part.
- b) Payment for services rendered to a surrogate after~~(however, costs for procedures to obtain eggs;~~ sperm or embryos have been transferred into the surrogate, non-medical expenses incurred by the covered individual to contract with the surrogate, and any other services rendered to a surrogate that are not directly related to treatment of the covered individual's infertility. ~~from a covered individual shall be covered if the individual chooses to use a surrogate);~~
- c) Expenses for cryopreservation~~Costs associated with cryo-preservation~~ and storage of sperm, eggs, and embryos. The exclusion must not apply to costs for; ~~provided, however,~~ subsequent procedures of a medical nature necessary to make use of the cryopreserved and stored~~cryo-preserved substance shall not be similarly excluded~~

## DEPARTMENT OF INSURANCE

## NOTICE OF PROPOSED AMENDMENTS

if the procedures are deemed non-experimental and non-investigational. The exclusion also must not apply to expenses for cryopreservation and storage when a covered individual receives those services under the conditions provided in Section 356z.32 of the Code relating to iatrogenic infertility;

- d) ~~Selected termination of an embryo; provided, however, that where the life of the mother would be in danger were all embryos to be carried to full term, said termination shall be covered;~~
- de) Non-medical costs of ~~an egg or sperm~~ donor or a surrogate;
- ef) Travel costs for travel within 100 miles of the insured's or member's home address as filed with the insurer or health maintenance organization, travel costs not medically necessary, not mandated or required by the insurer or health maintenance organization;
- fg) Infertility treatments deemed experimental in nature. However, where infertility treatment includes elements which are not experimental in nature along with those which are, to the extent services may be delineated and separately charged, those ~~services which are not experimental in nature shall be covered. No insurer or~~ HMO required to provide infertility coverage shall deny reimbursement for an infertility service or procedure on the basis that such service or procedure is deemed experimental or investigational unless supported by the written determination of the American Society for Reproductive Medicine (formerly known as the American Fertility Society or the American College of Obstetrics). These entities will provide such determinations for specific procedures or treatments only and will not provide determinations on the appropriateness of a procedure or treatment for a specific individual. Coverage is required for all procedures specifically listed in Section 356m of the ~~Illinois Insurance~~ Code, ~~entitled Infertility Coverage [215 ILCS 5/356m]~~, regardless of experimental status;
- h) ~~Infertility treatments rendered to dependents under the age of 18.~~

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF INSURANCE

## NOTICE OF PROPOSED RULE

- 1) Heading of the Part: Notice of Non-Compliance with Workers' Compensation Act
- 2) Code Citation: 50 Ill. Adm. Code 2915
- 3) Section Number: 2915.10      Proposed Action: New Section
- 4) Statutory Authority: Implementing Section 4 of the Workers' Compensation Act [820 ILCS 305] and Section 4 of the Workers' Occupational Diseases Act [820 ILCS 310] and authorized by Section 1405-40 of the Civil Administrative Code of Illinois [20 ILCS 1405] and Section 401 of the Illinois Insurance Code [215 ILCS 5/401].
- 5) A Complete Description of the Subjects and Issues Involved: A portion of 50 Ill. Adm. Code 9100.90 is being transferred from the Workers' Compensation Commission to the Department of Insurance. This is required by statutory changes that moved the Insurance Compliance Unit from the Workers' Compensation Commission to the Department of Insurance. See 20 ILCS 1405/1405-40.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rule replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rule contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking will not require a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to comment on this proposed rulemaking may submit written comments no later than 45 days after the publication of this Notice to:

R. John Street  
Assistant General Counsel

or Susan Anders  
Rules Coordinator

## DEPARTMENT OF INSURANCE

## NOTICE OF PROPOSED RULE

Illinois Department of Insurance  
122 S. Michigan Ave., 19<sup>th</sup> Fl.  
Chicago, IL 60603

312-339-2528

Illinois Department of Insurance  
320 W. Washington St., 4<sup>th</sup> Fl.  
Springfield, IL 62767

217-558-0957

13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: None, other than those cited for failure to purchase workers' compensation insurance. This rulemaking imposes no new obligations, however, but simply transfers a portion of an existing rule from the Workers' Compensation Commission to the Department of Insurance.
- B) Reporting, bookkeeping or other procedures required for compliance: If a company is cited for failure to purchase workers' compensation insurance, it will need to follow the procedures set out in the rule to respond and, if necessary, purchase workers' compensation insurance. This rulemaking imposes no new obligations, however, but simply transfers a portion of an existing rule from the Workers' Compensation Commission to the Department of Insurance.
- C) Types of professional skills necessary for compliance: If a company is cited for failure to purchase workers' compensation insurance, it will need to demonstrate from its records that it has purchased insurance. If it has not, it will need to negotiate and purchase the required insurance and pay any applicable fine. This rulemaking imposes no new obligations, however, but simply transfers a portion of an existing rule from the Workers' Compensation Commission to the Department of Insurance.

14) Small Business Impact Analysis: The Department determined that the rulemaking will not have an adverse impact on small business.

15) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent agendas because it was not anticipated within that time period.

The full text of the Proposed Rule begins on the next page:

## DEPARTMENT OF INSURANCE

## NOTICE OF PROPOSED RULE

## TITLE 50: INSURANCE

## CHAPTER I: DEPARTMENT OF INSURANCE

## SUBCHAPTER hh: WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY

## PART 2915

## NOTICE OF NON-COMPLIANCE WITH WORKERS' COMPENSATION ACT

## Section

## 2915.10 Notice of Non-Compliance

AUTHORITY: Implementing Section 4 of the Workers' Compensation Act [820 ILCS 305] and Section 4 of the Workers' Occupational Diseases Act [820 ILCS 310] and authorized by Section 1405-40 of the Civil Administrative Code of Illinois [20 ILCS 1405] and Section 401 of the Illinois Insurance Code [215 ILCS 5/401].

SOURCE: Adopted at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 2915.10 Notice of Non-Compliance**

- a) The Insurance Compliance Division of the Illinois Department of Insurance ("Department") may issue a Notice of Non-Compliance ("Notice") to any employer that the Department believes has failed to comply with the provisions of the Workers' Compensation Act [820 ILCS 305]. The notice shall be served on the employer at the employer's last known address or to the employer's representative. The notice shall be accompanied by a certificate of service on the employer, setting forth the time and manner of service.
- b) The Notice of Non-Compliance shall be a written statement setting forth, but not limited to, the following information:
  - 1) the name and address of the employer;
  - 2) a statement of the Section of the statute alleged to be violated, the periods of non-compliance and the penalty that may be imposed;
  - 3) a statement that the employer must submit evidence of compliance or otherwise respond within 30 days after the date of receipt of the notice. Examples of evidence of compliance are:



## DEPARTMENT OF INSURANCE

## NOTICE OF PROPOSED RULE

- A) a copy of the policy information page required to be filed under 50 Ill. Adm. Code 9100.20 that indicates coverage for the periods of alleged non-compliance;
  - B) a self-insurance certificate of approval covering the periods of alleged non-compliance;
  - C) a copy of a pooling agreement showing membership in a licensed group workers' compensation pool authorized by the Department during the alleged periods of non-compliance; and
- 4) a statement that failure to respond to the Notice of Non-Compliance within the prescribed time period shall cause the Workers' Compensation Commission to set this matter for hearing in accordance with 50 Ill. Adm. Code 9100.90(c).
- c) Informal Conference
- 1) When a Notice of Non-Compliance has been sent, the Department shall, at the request of the employer or its attorney, or may on its own initiative, schedule the matter for an informal conference at which a designated representative of the Department shall meet with the employer in an attempt to resolve the matter.
  - 2) A request by the employer or its attorney for an informal conference must be received by the Department within 15 days after the receipt of the Notice of Non-Compliance.
  - 3) The Department shall send written notice to the employer or its attorney at least 7 days prior to the scheduled conference.
  - 4) The conference shall be held at a site designated by the Department.
  - 5) If the matter cannot be resolved at the conference, the Workers' Compensation Commission shall set the matter for hearing in accordance with 50 Ill. Adm. Code 9100.90(c).

## ILLINOIS LIQUOR CONTROL COMMISSION

## NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: The Illinois Liquor Control Commission
- 2) Code Citation: 11 Ill. Adm. Code 100
- 3) Section Numbers: 100.500      Proposed Action: Amendment
- 4) Statutory Authority: 235 ILCS 5/3-12(a)(2)
- 5) A Complete Description of the Subjects and Issues Involved: The proposal creates an exception to the “of value” prohibition in the Liquor Control Act by allowing the use of supplier funded coupons and rebates for the sale of alcoholic beverages. The Illinois Liquor Control Act generally prohibits a licensed manufacturer or distributor of alcoholic liquor from providing anything “of value” to a licensed retailer of alcoholic liquor. The proposal permits licensed manufacturers and distributors to provide coupons and reimbursements to retailers to be applied to retail alcoholic beverage pricing.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: These rules do not create or enlarge a mandate as described in Section 3(b) of the State Mandates Act.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

Illinois Liquor Control Commission  
ATTN: Legal Division  
Richard J. Daley Center  
50 W. Washington, Room 209

## ILLINOIS LIQUOR CONTROL COMMISSION

## NOTICE OF PROPOSED AMENDMENT

Chicago, IL 60602

312/814-2206

13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: The proposal will primarily impact large and small alcoholic beverage manufacturers, distributors and retailers. The intent of the proposal is to authorize the use of coupons and rebates across a broad spectrum of licensed retail outlets including small convenience and grocery businesses.
- B) Reporting, bookkeeping or other procedures required for compliance: Recordkeeping for three years as currently required.
- C) Types of professional skills necessary for compliance: Administrative

14) Small Business Impact Analysis:

- A) Types of businesses subject to the proposed rule:
  - 31-33 Manufacturing
  - 42 Wholesale Trade
  - 44-45 Retail Trade
- B) Categories that the agency reasonably believes the rulemaking will impact, including:
  - ii. regulatory requirements
  - iii. purchasing
  - iv. record keeping
  - v. marketing, pricing

- 15) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent agendas because: The Commission was not prepared to move forward with Rulemaking at that time.

The full text of the Proposed Amendment begins on the next page:

## ILLINOIS LIQUOR CONTROL COMMISSION

## NOTICE OF PROPOSED AMENDMENT

## TITLE 11: ALCOHOL, HORSE RACING, LOTTERY, AND VIDEO GAMING

## SUBTITLE A: ALCOHOL

## CHAPTER I: ILLINOIS LIQUOR CONTROL COMMISSION

## PART 100

## THE ILLINOIS LIQUOR CONTROL COMMISSION

## Section

100.5	Penalties
100.10	Definitions
100.20	Employment of Minors
100.30	Violation of Federal Law, State Statute or City, Village or County Ordinance or Regulation
100.40	Registration of Tasting Representatives
100.50	Advertising
100.60	Geographical Territories
100.70	Labels
100.80	Bonds (Repealed)
100.90	Credit to Retail Licensees
100.100	Internal Changes Within Corporations
100.110	Application Forms
100.120	Railroad Licenses
100.130	Books and Records
100.140	Miniatures (Repealed)
100.150	Salvaged Alcoholic Liquors
100.160	Sanitation
100.170	Taps
100.180	Procedure Before Commission on Citations
100.190	Procedure Before Commission on Request for Continuance of Any Hearing
100.200	Wagering Stamps (Repealed)
100.210	Inducements
100.220	Retail Licensee Clubs (Repealed)
100.230	Resumption of Business on Appeal
100.240	Transactions Involving Use of Checks and Their Equivalent (Repealed)
100.245	Consignment Sales Prohibited; Bona Fide and Non-Bona Fide Returns
100.250	Transfer of Alcohol
100.255	Off-Premises Retail Warehousing Prohibited
100.260	Uniform Systems of Accounts
100.270	Multi-Use Facilities

## ILLINOIS LIQUOR CONTROL COMMISSION

## NOTICE OF PROPOSED AMENDMENT

100.275	Hotel/Motel Mini Bars and Room Service
100.280	Giving Away of Alcoholic Liquors
100.285	Tastings, Product Samplings and Test Marketing
100.290	Refilling
100.300	Authorization to Remove Bottles
100.310	Food Service at Park Districts
100.320	Airplanes
100.325	Boats/Riverboat Gaming
100.326	Auction Liquor Licenses
100.330	Advertising
100.340	Petitions for the Adoption, Amendment or Repeal of a Rule
100.350	Procedures For Filing Appeals From an Order of the Local Liquor Control Commissioner
100.360	Review on Record – Certification of Ordinance
100.370	Procedures Before the Commission
100.380	Ex Parte Consultations
100.390	Transcripts – Administrative Review
100.400	Procedures Before the Commission on Disputes under Section 35 of the Illinois Wine and Spirits Industry Fair Dealing Act (Repealed)
100.410	Commission Meetings
100.420	Wine Maker Self-Distribution
100.430	Craft Brewer Self-Distribution
100.460	Revoked Licenses
100.480	Importation of Alcoholic Liquor
100.500	"Of Value" Provisions – General Applicability

AUTHORITY: Implementing and authorized by Section 3-12(a)(2) of the Liquor Control Act [235 ILCS 5].

SOURCE: Rules and Regulations of the Illinois Liquor Commission, amended March 31, 1977; amended July 7, 1977; amended at 3 Ill. Reg. 12, p. 65, effective March 22, 1979; codified at 5 Ill. Reg. 10706; amended at 8 Ill. Reg. 6041, effective April 19, 1984; amended at 12 Ill. Reg. 19387, effective November 7, 1988; amended at 18 Ill. Reg. 4811, effective March 9, 1994; amended at 20 Ill. Reg. 834, effective January 2, 1996; expedited correction at 20 Ill. Reg. 4469, effective January 2, 1996; amended at 21 Ill. Reg. 5542, effective May 1, 1997; amended at 23 Ill. Reg. 3787, effective March 15, 1999; emergency amendment at 23 Ill. Reg. 8687, effective July 13, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 13609, effective October 28, 1999; amended at 25 Ill. Reg. 13596, effective October 15, 2001; amended at 26 Ill. Reg. 17966, effective December 9, 2002; amended at 27 Ill. Reg. 17386, effective November 10, 2003;

## ILLINOIS LIQUOR CONTROL COMMISSION

## NOTICE OF PROPOSED AMENDMENT

amended at 39 Ill. Reg. 4433, effective March 12, 2015; amended at 39 Ill. Reg. 10386, effective July 10, 2015; amended at 42 Ill. Reg. 22577, effective November 29, 2018; amended at 44 Ill. Reg. 16811, effective September 29, 2020; amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 100.500 "Of Value" Provisions – General Applicability**

- a) Except as allowed by the Act, it shall be unlawful for any licensed manufacturer, non-resident dealer, distributor, importing distributor, foreign importer, any of their officers, managers, partners, owners, employees, agents, or affiliates, or any member of the family of such manufacturer, non-resident dealer, distributor, importing distributor, or foreign importer (collectively referred to as an "industry member") to furnish, give or lend money or anything of value, or otherwise loan extend credit (other than merchandising credit in the ordinary course of business for a period not to exceed 30 days, as permitted by Section 6-5 of the Act, and Section 100.90 of this Part), directly or indirectly to a licensed retailer or any officer, associate, member, representative, agent or employee of that licensee ("retailer"). It is likewise unlawful for any retailer, as defined in this subsection, to accept or receive money or any item of value from an industry member. A retailer does not include a special event retailer as defined in Section 1-3.17.1 of the Act.
- b) Third-Party Arrangements. The furnishing, giving, renting, lending or selling of equipment, fixtures, signs, supplies, money, services or other thing of value, not specifically allowed by this Section, by an industry member to a third party, when the benefits resulting from the things of value flow to a retailer, is an indirect furnishing of a thing of value within the meaning of Sections 6-5 and 6-6 of the Act. Indirect furnishing of a thing of value includes, but is not limited to, making payments for advertising to a retailer association or a display company when the resulting benefits flow to an individual retailer. An indirect furnishing of a thing of value does not arise when the industry member did not intend that the thing of value would be furnished to a retailer by a third party, or the industry member did not reasonably foresee that the thing of value would have been furnished to the retailer.
- c) Violations of the "Of Value" Provisions of Sections 6-5 and 6-6. Performance of the following activities or provision of the following items violates the provisions on giving anything "of value" under Sections 6-5 and 6-6 of the Act:

## ILLINOIS LIQUOR CONTROL COMMISSION

## NOTICE OF PROPOSED AMENDMENT

- 1) Shelf Space Payments, Display Service and Slotting Fees Prohibition. An industry member shall not directly or indirectly offer or give anything "of value" to a retailer, and a retailer shall not directly or indirectly request or accept anything "of value" from an industry member, in exchange for offering for sale or displaying an industry member's product on a retailer's shelf, on a tap handle, at any other desired location within the retail establishment, or on a retailer's website.
- 2) Credit to Retailers. An industry member shall not provide credit to retailers unless permitted by Section 6-5 of the Act as implemented by Section 100.90 of this Part. The statute provides the following parameters for extending credit to retailers:
  - A) No credit extensions are allowed on the purchase of beer by retailers. The full invoice cost of beer must be paid in cash as defined in Section 100.90(j) by the retailer on or before the delivery date.
  - B) An industry member selling wine or spirits to a retailer may extend a merchandising credit in the ordinary course of business not to exceed 30 days.
- 3) Security Interest. An industry member's acquisition of a mortgage on any of the real or personal property a retailer uses in its alcoholic beverage business is a prohibited interest in the retailer's property, except to the extent a lien or other security interest is acquired only in the industry member's products sold to the retailer in order to secure payment of goods sold on credit, if that credit is permissible under Section 6-5 of the Act.
- 4) Guaranteeing Loans. An industry member is prohibited from guaranteeing any loan or repayment of any financial obligation owed by a retailer, and a retailer is prohibited from guaranteeing any loan or repayment of any financial obligation owed by an industry member.
- 5) Industry Member Advertising. An industry member shall not give, and a retailer shall not accept, anything of value in exchange for any advertising service, including but not limited to:

## ILLINOIS LIQUOR CONTROL COMMISSION

## NOTICE OF PROPOSED AMENDMENT

- A) Display space advertising or placement of ads in a retailer's publications, including a retailer's website; or
  - B) Payments to a third party for advertisements in which the primary purpose of the advertisement promotes a retailer's business or aspects of the retailer's business.
- d) Exceptions to the "Of Value" Provisions of Sections 6-5 and 6-6 of the Act. Having due regard for public health, established trade customs not contrary to the public interest, the purposes of the Act, and the items or activities permissible under the "of value" provisions of Sections 6-5 and 6-6, performance of the following activities or provision of the following items is permissible under Sections 6-5 and 6-6, as long as the performance or provision is not conditioned upon an activity or arrangement intended to create a "tied-house" as defined in 27 USC 305(b).
- 1) All licensees shall maintain records on the licensed premises, subject to a Section 100.130(e) waiver, for all items furnished to retailers, or received by retailers, under Sections 6-5 and 6-6 and this Section 100.500 for a period of three years. Commercial records or invoices may be used to satisfy this recordkeeping requirement, provided that all required information listed in this subsection (d)(1) is contained in these commercial records or invoices. These records must include:
    - A) The name and address of the retailer receiving the item;
    - B) The date furnished;
    - C) The item furnished;
    - D) The cost of the furnished item to the industry member, determined by the invoice price paid by the industry member; and
    - E) Charges to the retailer for any item.
  - 2) Signage. An industry member may provide signage to a retailer, and a retailer may accept signage from an industry member, so long as the signage, in the aggregate, does not exceed the number of signs allowed or the cost adjustment factor dollar limitations under Section 6-6.



## ILLINOIS LIQUOR CONTROL COMMISSION

## NOTICE OF PROPOSED AMENDMENT

- 3) Product Displays. An industry member shall not directly or indirectly offer or give anything "of value" to a retailer, and a retailer shall not directly or indirectly request or accept anything "of value" from an industry member, in exchange for setting up product or other displays, or renting displays, shelf, cold box, storage or warehouse space at a retail establishment (i.e., slotting fee or allowance), except as specifically permitted by Section 6-6.3. The act by an industry member of giving or selling product displays to a retailer is permissible if the total value of the product display does not exceed \$300 per brand at any time per retail location. The value of a product display is the actual cost to the industry member that initially purchased the product display or, if the industry member did not purchase the product display, the fair market value of the product display. Transportation and installation costs are not included in the \$300 value.
- A) A product display means any racks, bins, barrels, casks, coolers (having a fair market value of no more than \$175, with no exterior plumbing or electrical hookup), buckets, glass or transparent display cases, shelving or similar items whose primary function is to hold and display alcoholic liquors at point-of-sale, at or on a retail licensed premises. Product displays may also include "display enhancers" that are exclusive of trade fixtures and equipment and include only items that convey the product display sales programming message to consumers. All product displays, including display enhancers, must cumulatively fall within the dollar limitation of product displays.
- B) All product displays must bear conspicuous and substantial advertising matter on the product of the industry member that is permanently inscribed or securely affixed. The name and address of the retailer may appear on the product display.
- C) Industry members may not pool or combine dollar limitations to provide a retailer with a product display in excess of \$300 per brand.
- D) The giving or selling of product displays may be conditioned upon the purchase of alcoholic liquor advertised on those displays in a

## ILLINOIS LIQUOR CONTROL COMMISSION

## NOTICE OF PROPOSED AMENDMENT

quantity necessary for the initial completion of the display. No other condition can be imposed by the industry member on the retailer in order for the retailer to obtain the product display.

- 4) Equipment, Fixtures, Furniture and Supplies. Except as provided under the Act, an industry member cannot give, lend, lease, furnish or sell furniture, equipment or fixtures to a retailer. An industry member may sell equipment and supplies to retailers if the equipment or supplies are sold to the retailer for a price that is not less than the cost of the equipment or supplies. For purposes of this Section, the cost of equipment or supplies is the amount that the industry member paid for the equipment or supplies if the industry member did not acquire them from another industry member. If the industry member selling equipment or supplies to a retailer acquired the equipment or supplies from another industry member (initial selling industry member), the cost of the equipment or supplies is the amount that the initial selling industry member paid for them. In either case, if the equipment or supplies were manufactured or produced by an industry member, the cost of the equipment or supplies is deemed to be the fair market price of the equipment or supplies. The sale price must be collected from the retailer by the industry member within 30 days after the date of the sale. Equipment and supplies includes items such as glassware (or similar containers made of other material), dispensing accessories, carbon dioxide (and other gasses used in dispensing equipment), coasters, trays, napkins, cups and buckets. Dispensing accessories include items such as standards, faucets, cold plates, rods, vents, taps, tap standards, hoses, washers, couplings, gas gauges, vent tongues, shanks, check valves, and counter-top branded shot machines.
- 5) Quantity Discounting. Quantity discounting is permissible only if an industry member offers the same quantity price discount to all similarly situated retailers in the same geographic area who agree to purchase the required predetermined quantity of alcoholic liquor of the same brand. A "quantity discount" is when an industry member offers a retailer a discount at the time of sale based upon an agreement by which the retailer will purchase a predetermined number of products in return for receiving a discount on the same goods purchased. However, the following activities are prohibited:

## ILLINOIS LIQUOR CONTROL COMMISSION

## NOTICE OF PROPOSED AMENDMENT

- A) An industry member may not require a retailer to take and dispose of any quota of alcoholic liquors. Bona fide quantity discounts shall not be deemed to be quota sales.
- B) An industry member may not require a retailer to purchase one product in order to purchase another. This includes combination sales if one or more products may be purchased only in combination with other products and not individually. However, an industry member is not prohibited from selling, at a special combination price, two or more kinds or brands of products to a retailer provided:
  - i) The retailer has the option of purchasing either product at the usual price; and
  - ii) The retailer is not required to purchase any product it does not want.
- C) The furnishing of free warehousing by delaying delivery of alcoholic liquors beyond the time that payment for the product is received, or if a retailer is purchasing on credit as permitted by Section 6-5 of the Act, as implemented by Section 100.90 of this Part, delaying final delivery of product beyond the close of the 30-day credit period, is the furnishing of an "of value" service in violation of Section 6-5.
- D) Subsections (d)(5)(A) through (C) notwithstanding, this Section does not prohibit legitimate sales programming among or between the industry tiers in which the primary purpose of the programming is to increase product sales and merchandising to retailers and is not a subterfuge to provide prohibited "of value" inducements to a retailer. These legitimate sales programs are lawful if:
  - i) Sales incentives are temporary and designed and implemented to produce product volume growth with retailers;
  - ii) The sales incentives to retailers are based on volume and discounted pricing, including discounts in the form of cash,

## ILLINOIS LIQUOR CONTROL COMMISSION

## NOTICE OF PROPOSED AMENDMENT

credits, rebates, alcoholic liquor products, and product displays;

- iii) The sales incentives are documented on related sales or credit memoranda; and
  - iv) The sales incentives are offered to all similarly situated retailers.
- E) The use of product credits and rebates, such as "end of month", "end of year", "end of period", or other such temporary cumulative discounts, credits and rebates from an industry member to a retailer is an adjustment of the purchase price based on volume purchasing and, as such, is not a violation of Section 6-5 of the Act. These cumulative discounts are considered to be a form of pricing arrangement; provided they are made pursuant to a written agreement, entered into at the time of sale; extend for a specific period of time; are calculated based solely upon the purchases made by the retailer receiving the cumulative discount; and are documented on related sales and credit memoranda. If the retailer is part of a group of retailers with common ownership, however, cumulative discounts, credits or rebates may be provided in one aggregate payment for all retailers within the common ownership structure. In this case, the cumulative discount, credit or rebate must be calculated based upon the volume purchases of each individual retailer, with supporting documentation that denotes the portion of the discount, credit or rebate attributable to each individual retailer.
- F) "No Charge" Products. Price-to-retailer sales incentives that include volume-based discounts on the purchase price, and/or "no charge" products that represent an additional overall discount on the related alcoholic liquor product purchased, is an adjustment of the purchase price based on volume purchasing if made at the time of sale, and if the amount of the product given at no charge with the order is not so great as to constitute a subterfuge in which the pricing aspect is merely a means to provide a retailer with a "gift" or "free" product. These transactions are not a violation of Section 6-5 or 6-6 of the Act. However, "penny deals" and other such

## ILLINOIS LIQUOR CONTROL COMMISSION

## NOTICE OF PROPOSED AMENDMENT

transactions in which the "no charge" or deeply discounted products (i.e., \$.01 per case) are not related to a corresponding volume purchase are considered free product and a violation of Section 6-5 or 6-6. Deals regarding product closeouts and other such deep discounting, non-ordinary business transactions are not prohibited under this subsection (d)(5)(F). "No charge" goods must be listed and indicated as such on the invoice to the retailer. The importing distributor or distributor must have records to support the volume-based discount and the purchase price. The provisions of Section 100.280 prohibiting a licensee from giving away alcoholic liquor for commercial purposes is applicable.

- 6) Samples. If a retailer has not purchased a brand of alcoholic liquor from an industry member during the immediately preceding 12-month period, it is not an "of value" violation for an industry member to provide that retailer with not more than 384 ounces of any brand of beer, 3 liters of any brand of wine, and 3 liters of any brand of spirits. These sample requirements do not apply to consumer tastings.
- 7) Social Media Advertising. An industry member may use social media to advertise product location communications that inform the public where its products may be purchased (retail locators) and pre-announcing any promotional activity to be held on a retailer's premises, if otherwise permitted by the Act, provided:
  - A) The industry member does not give compensation to, or receive compensation from, directly or indirectly, the retail license holder for social media advertising.
  - B) If the social media advertising is a product location communication, the purpose of the communication must be limited to allowing a consumer to determine the availability of a specific product at a retailer. If the social media pre-announces promotional activity at a retailer's premise, the focus of the social media advertising must be the product promotion and any reference to the retailer should provide only necessary information, such as location of the event.
  - C) The advertisement does not contain the retail price of the product.

## ILLINOIS LIQUOR CONTROL COMMISSION

## NOTICE OF PROPOSED AMENDMENT

- D) All social media advertising must also comply with all applicable rules and regulations issued by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury.
  - E) The industry member does not offer social media advertising to a specific retailer to the exclusion of other, similarly situated retailers.
- 8) Industry Member Promotional Events at Retailer Locations. Any promotional event sponsored by an industry member at a retailer's premises that primarily promotes the retailer's business and does not promote, or only incidentally promotes, the industry member's brand or brands of products violates the "of value" provisions of Section 6-5 of the Act. Industry member promotional events held at retailer premises must focus on the industry member or brands being promoted and all reference to the retailer in any advertisement shall be limited to the name and address of the retailer, which shall be relatively inconspicuous in relation to the advertisement as a whole. Promotional events include, but are not limited to, tastings, samplings, bottle signings, public product launch events, or other similar methods of brand promotion. The promotions shall be available to all similarly situated retailers without a purchase requirement imposed upon a retailer.
- 9) Consumer Advertising Specialties. Consumer advertising specialties, which are items, including but not limited to trading stamps, non-alcoholic mixers, pouring racks, ash trays, bottle or can openers, corkscrews, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, postcards, pencils, shirts, caps and visors, that are intended to be given to and received by the consumer, may be given by an industry member to a retailer, as long as the retailer gives all the items away to consumers.
- A) The industry member may not, directly or indirectly, pay or credit the retailer for using or distributing these items, or for any expense incidental to their use.
  - B) Only if the retailer pays for the consumer advertising specialties may the items be retailer-specific. Consumer advertising

## ILLINOIS LIQUOR CONTROL COMMISSION

## NOTICE OF PROPOSED AMENDMENT

specialties must bear conspicuous and substantial advertising matter about the brand or the industry member.

- 10) Educational Seminars. An industry member may give or sponsor educational seminars for employees of retailers either at the industry member's premises or at the retail establishment. Examples of these educational seminars include seminars dealing with use of a retailer's equipment, training seminars for employees of retailers, or tours of the industry member's plant premises. This subsection (d)(10) does not authorize an industry member to pay a retailer's expense in conjunction with an educational seminar (such as travel and lodging). Industry members may provide nominal hospitality during the event, including meals and local transportation.
- 11) Industry members may service, balance or inspect draft beer, wine or distilled spirits systems at regular intervals, and may provide labor to replace or install rods, taps, faucets, fittings and lines in draft beer, wine or distilled spirits dispensing equipment. However, free cleaning of coils by an industry member or by a company whose services are paid for by an industry member shall be considered something of value in violation of Sections 6-5 and 6-6 of the Act.
- 12) Courtesy wagons, coil boxes, cold plates or pumps may be supplied to a retailer, by an industry member, free of charge one time per year for a one-day period. However, the industry member shall not supply free beer, wine or distilled spirits to a retailer for the event.
- 13) Courtesy wagons, coil boxes, cold plates or pumps may be supplied to a retailer, by an industry member, for an event that is given by or under the auspices or sponsorship of a municipal, religious, charitable, fraternal or social organization that is a holder of a Special Event License. However, the industry member shall not supply free beer, wine or distilled spirits to a retailer for the event.
- 14) Product Donations. An industry member may make contributions of cash, alcoholic liquor products, non-alcoholic products, services, equipment or signs to a not-for-profit organization, including but not limited to charitable organizations, religious organizations, trade associations, political organizations, and fraternal organizations. An industry member

## ILLINOIS LIQUOR CONTROL COMMISSION

## NOTICE OF PROPOSED AMENDMENT

may not make contributions of alcoholic liquor products to any not-for-profit organization that has a local municipal and State of Illinois retail license. These donations shall be subject to the following conditions:

- A) Donations of alcoholic liquor products may not be given for commercial purposes. The proof of donative intent is on the industry member;
  - B) An industry member must maintain invoices on its licensed premises for a period of three years for all alcoholic liquor products donated to not-for-profit organizations;
  - C) Signage dollar limitations contained in Section 6-6 of the Act do not apply to signage and advertising materials donated to a not-for-profit organization; and
  - D) Advertising and signage referencing the industry member must be reasonably commensurate with a donative intent to ensure that the charitable donation is not being made for a commercial purpose, in violation of Section 100.280. The proof of donative intent is on the industry member.
- 15) Customized Label for Wine and Spirits Products. Wine or spirits customized label programs may be offered by industry members to retailers. A customized label program is defined as a sale in which the retailer purchases a single barrel of wine or spirits and the retailer has the option of selecting the product blend, age, estate, barrel or wood type in which the wine or spirits is stored or aged. Custom label programs must be offered to all similarly situated retailers who agree to purchase the program, under the following guidelines:
- A) All formulas and brand rights to the wine and spirits products must be owned by industry members; no brand rights to the wine or spirits product, or exclusive use of the blend or product options, may be offered to, or accepted by, the retailer;
  - B) An individual, non-exclusive custom label may include the retailer's name, provided there is a matching Federal Certificate of



## ILLINOIS LIQUOR CONTROL COMMISSION

## NOTICE OF PROPOSED AMENDMENT

Label Approval and no language on the label or container suggests or implies that the wine or spirits is exclusive to the retailer; and

- C) Any product displays that are a part of the customized label program must adhere to the rules on product displays set forth in subsection (d)(3).
- 16) Non-Alcoholic Merchandise. An industry member who is also in business as a bona fide producer or vendor of merchandise other than "alcohol", "spirits", "wine", "beer" or "alcoholic liquor", as those terms are defined in Article I of the Act, may furnish, give, sell or offer to sell that non-alcoholic merchandise to retailers as provided in Section 6-6.3 of the Act. However, non-alcoholic merchandise may not be used by an industry member to induce or cause a retailer to engage in any activity prohibited by the Act or this Part.
- 17) Stocking, Rotation, Resetting, and Pricing Services
- A) Industry members, at retail licensed establishments, may stock alcoholic liquors they sell, provided that alcoholic liquor products of other industry members are not moved, altered or disturbed. This stocking may be done only during the course of, or within 24 hours after, a regular sales call or delivery to the retailer. The stocking is considered service incidental to a sales call or delivery. Stocking is defined as any placing of alcoholic liquors where they are to be stored or where they are offered for sale.
  - B) Industry members may rotate their own alcoholic liquor products at a retailer's premises during the normal course of a sales call or a delivery. Rotation is defined as moving newer, fresher product from a storage area to a point-of-sale area and the replenishing of the point-of-sale area with fresh product. Rotation may be performed at any location within a retailer's premises.
  - C) Industry members are permitted to participate in or be present at merchandising resets conducted at a retailer's premises no more than four times per year. Resets are defined as large-scale rearrangement of the alcoholic liquor products at a retailer's premises. During resets, industry members may stock or restock

## ILLINOIS LIQUOR CONTROL COMMISSION

## NOTICE OF PROPOSED AMENDMENT

entire sections of point-of-sale locations at the retailer's premises. No reset shall occur without at least 14 days prior notice made by the retailer to all industry members whose alcoholic liquor products are carried by the retailer. Industry members may only move, alter, disturb or displace their alcoholic liquor products and the products of properly notified but nonattending industry members.

- D) Industry members may provide to retailers recommended diagrams, shelf plans or shelf schematics that suggest beneficial display locations for their alcoholic liquor products at the retailer's premises. Industry members may not condition pricing discounts, credits, rebates, access to brands, or provision of any other item or activity permissible under the Act or this Section upon a retailer's choice to implement or not implement diagrams, shelf plans or shelf schematics.
- E) Industry members may not affix prices to products on behalf of retailers. This prohibition includes the indirect affixing of prices to product, including entering prices into a retailer's computer system. This prohibition does not prohibit industry members, after stocking a shelf, from affixing shelf tags that identify the product and price of the alcoholic liquor; however, at no time may an industry member delegate or contract this service to a third party. Shelf tags are considered point-of-sale advertising materials and are subject to the provisions of Section 6-6 of the Act. If permitted stocking by an industry member involves movement and a change in the placement of its product on the retailer's shelf, shelf tags may be moved to the new position of the product.

18) Consumer Coupons and Discounts

- A) Coupons; Defined – A coupon for alcoholic liquor is a paper or digital price discount offered by an industry member to a consumer either directly or indirectly through redemption by a retailer. For purposes of this Section, a coupon is not a paper or digital price discount funded solely by the retailer to a consumer.
- B) Coupons; Types and conditions

## ILLINOIS LIQUOR CONTROL COMMISSION

## NOTICE OF PROPOSED AMENDMENT

- i) Direct to Consumer Coupons – Direct to Consumer Coupons are coupons offered by an industry member directly to a consumer without redemption through a retailer (e.g. mail-in coupons). Subject to retailer Direct to Consumer Coupons to consumers from any location including within or adjacent to the licensed retail premises and at or near the product discounted. Direct to Consumer Coupons are solely authorized as follows:
- Free standing inserts from a publication;
  - In-ad Direct to Consumer Coupons from a publication;
  - Cross-product Direct to Consumer Coupons if the discount applies to a non-alcoholic product which is not a retailer branded or private label product;
  - On-product or product display Direct to Consumer Coupons including but not limited to neck hangers and shelf tags;
  - Retailer register printed Direct to Consumer Coupons;
  - Consumer printed Direct to Consumer Coupons;
  - Digital/online Direct to Consumer Coupons transmitted directly or indirectly through a non-retailer third-party processor to the consumer (e.g. phone app, text message);
  - Direct to Consumer Coupons that consumers return (via mail/email) directly to an industry member or indirectly to an industry member through a non-retailer third-party processor to an industry member (Mail-in coupons).

## ILLINOIS LIQUOR CONTROL COMMISSION

## NOTICE OF PROPOSED AMENDMENT

- ii) Retailer Redemption Coupons – Retailer Redemption Coupons are Coupons a consumer may present to the retailer for an instant price discount at the retailer point of sale and for which the retailer is reimbursed by the industry member for the face value of the Coupon. Such coupons may include Instant Redeemable Coupons or “IRCs” and are solely authorized as follows:
- Free standing inserts from a retailer or non-retailer publication;
  - In-ad Retailer Redemption Coupons from a retailer or non-retailer publication;
  - Cross-product Retailer Redemption Coupons if the discount applies to a non-alcoholic product which is not a retailer branded or private label product;
  - Retailer register printed Retailer Redemption Coupons;
  - Consumer printed Retailer Redemption Coupons;
  - Digital/online Retailer Redemption Coupons transmitted directly to the consumer.
- iii) Product Adjacent Retailer Redemption Coupons; Prohibited - An industry member shall not offer or place Retailer Redemption Coupons at the retailer licensed location on the alcoholic liquor product, product shelf, product display or on any physical location near or adjacent to the product. A retailer shall not place or permit the placement of Retailer Redemption Coupons at the retailer licensed location on the alcoholic liquor product, product shelf, product display or on any physical location near or adjacent to the product.
- iv) Coupons, conditions

## ILLINOIS LIQUOR CONTROL COMMISSION

## NOTICE OF PROPOSED AMENDMENT

- Retailer Redemption Coupons shall be reimbursed to the retailer only with substantiation through documentation that there has been a purchase of product to warrant the reimbursement. All records of reimbursements, including any supporting documentation and proof of reimbursement, shall be maintained by the retail licensee for a period of three years.
- Industry members shall not reimburse a retailer for more than the face value of all Coupons redeemed.
- Retailer Redemption Coupons shall be redeemable at all participating retailer locations and shall include a statement on the face of the Retailer Redemption Coupon substantially similar to the following statement: "This coupon shall be redeemable at all participating retailers."
- Coupons regulated in this Section shall not identify the name or brand of the retailer.
- Industry members offering coupons to be placed at the retailer licensed location for Direct to Consumer Coupons shall distribute such coupons to a retailer in direct proportion to the number of coupon-related products sold by the retailer and shall offer such coupons to all retailers.
- Coupons shall abide by 11 Ill. Admin. Code 100.280. Coupons shall not result in alcoholic liquor giveaways nor shall Coupons use the words "free" or "complimentary" on the face of the coupon.
- Coupons that require the purchase of one alcoholic liquor product to obtain a full or partial discount on a separate alcoholic liquor product are prohibited.

## ILLINOIS LIQUOR CONTROL COMMISSION

## NOTICE OF PROPOSED AMENDMENT

- Coupons subject to this Section shall not be redeemable for retailer branded or retailer private label products or be retailer specific in any manner.
  - Coupons must contain an expiration date and cannot be redeemed by the retailer beyond the expiration date.
  - Coupons shall state on the face of the coupon that coupon use is for persons aged 21 and over.
  - Coupons offered at a retailer licensed premises shall be presumed to be funded by industry members unless otherwise demonstrated.
  - Coupon programs are voluntary. An industry member shall not compel a retailer to accept a Coupon nor shall a retailer demand an industry member to offer a Coupon.
  - Coupons may be fulfilled through an unlicensed third-party fulfillment agent acting on behalf of the industry member offering the Coupons. Any act or omission of a third-party fulfillment agent related to Coupons is the act or omission of the industry member.
  - No Coupon or non-Coupon discount shall be offered as part of a retailer loyalty or awards program (This does not apply to discounts funded solely by the retailer).
- C) Scan Discount, prohibited – A Scan Discount is a non-Coupon product discount incorporated into the advertised price of the product either by agreement between an industry member and a retailer or by act of the industry member for a specified promotional period. Such Scan Discounts are also known as "scan backs". An industry member shall not reimburse a retailer for a Scan Discount and shall not provide anything else "of value" to a

ILLINOIS LIQUOR CONTROL COMMISSION

NOTICE OF PROPOSED AMENDMENT

retailer unless expressly authorized by the Illinois Liquor Control Act or Illinois Liquor Control Commission Rules under any circumstances.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Practice and Procedure in Administrative Hearings
- 2) Code Citation: 77 Ill. Adm. Code 100
- 3) 

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
100.1	Amendment
100.2	Amendment
100.3	Amendment
100.4	Amendment
100.5	Amendment
100.6	Amendment
100.7	Amendment
100.8	Amendment
100.9	Amendment
100.10	Amendment
100.11	Amendment
100.12	Amendment
100.13	Amendment
100.15	Amendment
100.17	Amendment
100.19	Amendment
100.25	Amendment
100.50	Amendment
100.55	Amendment
100.60	Amendment
- 4) Statutory Authority: Administrative Procedure Act [5 ILCS 100]
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking revises the Illinois Department of Public Health's (DPH) "Practice and Procedure in Administrative Hearings" (i.e., DPH's Administrative Hearing Rules). The proposed amendments update the Administrative Hearing Rules to bring them in line with current or preferred practices for conducting administrative hearings at DPH. The proposed amendments apply to DPH's Administrative Hearing Rules to proceedings arising under the MC/DD Act [210 ILCS 46], the ID/DD Community Act [210 ILCS 47], and the Specialized Mental Health Rehabilitation Act [210 ILCS 49], in addition to proceedings arising under the Nursing Home Care Act [210 ILCS 45], the Emergency Medical Service (EMS) Systems Act [210 ILCS 50], the Asbestos Abatement Act [105 ILCS 105], and Illinois Plumbing License Law [225 ILCS 320]. The proposed amendments



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

prohibit the filing of any documents in an administrative hearing that contains personal information, such as Social Security or Medicare or Medicaid numbers. Additionally, the proposed amendments change the form of papers filed in administrative proceedings, in order to reflect the fact that documents are now primarily filed in electronic formats. Further, the proposed amendments encourage the use of electronic mail to serve documents, rather than doing so through regular mail. Finally, the proposed amendments significantly change the way that DPH's Administrative Law Judges conduct Prehearing Conferences and Evidentiary Hearings in the matters that come before them.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? Yes
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not create a State mandate.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning this rulemaking within 45 days after this issue of the *Illinois Register* to:

Department of Public Health  
Attention: Tracey Trigillo, Rules Coordinator  
Lincoln Plaza  
524 South 2nd Street, 6th Floor  
Springfield, IL 62701

(217)782-1159  
dph.rules@illinois.gov

- 13) Initial Regulatory Flexibility Analysis:

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- A) Types of small businesses, small municipalities and not for profit corporations affected: The proposed amendments have no impact on small businesses.
  - B) Reporting, bookkeeping or other procedures required for compliance: None
  - C) Types of professional skills necessary for compliance: None
- 14) Small Business Impact Analysis: None
- 15) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the two most recent agendas because DPH did not anticipate the need for this rulemaking at that time.

The full text of the Proposed Amendments begins on the next page:

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

TITLE 77: PUBLIC HEALTH  
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH  
SUBCHAPTER a: GENERAL RULES

PART 100  
PRACTICE AND PROCEDURE IN ADMINISTRATIVE HEARINGS

## SUBPART A: APPLICABILITY AND DEFINITIONS

## Section

- 100.1 Authority and Applicability  
100.2 Definitions and Incorporated and Referenced Materials

## SUBPART B: GENERAL HEARINGS

## Section

- 100.3 Parties to Hearings  
100.4 Appearance – Right to Counsel  
100.5 Emergency Action  
100.6 Hearings Requested by Complainants Pursuant to Section 3-702 of the Nursing Home Care Act, [Section 3-704 of the MC/DD Act](#), or [Section 3-704 of the ID/DD Community Care Act](#)  
100.7 Initiation of a Contested Case  
100.8 Motions  
100.9 Form of Papers  
100.10 Service  
100.11 Prehearing Conferences  
100.12 Discovery  
100.13 Hearings  
100.14 Subpoenas  
100.15 Administrative Law Judge's Report and Recommendations  
100.16 Proposal for Decision (Repealed)  
100.17 Final Orders  
100.18 Records of Proceedings  
100.19 Miscellaneous

SUBPART C: ADMINISTRATIVE HEARINGS UNDER  
THE SMOKE FREE ILLINOIS ACT

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

Section	
100.25	Initiation of a Hearing
100.35	Parties to Hearings
100.40	Right to Counsel
100.45	Prehearing Conference
100.50	Motions
100.55	Discovery
100.60	Hearings
100.70	Report and Recommendations
100.80	Final Order and Payment of Fines
100.90	Record of Hearing

**AUTHORITY:** Implementing and authorized by Section 5-10(a)(i) of the Illinois Administrative Procedure Act [5 ILCS 100] and Sections 55 through 55.63 of the Civil Administrative Code of Illinois [20 ILCS 2310].

**SOURCE:** Adopted at 2 Ill. Reg. 38, p. 91, effective September 23, 1978; amended and codified at 4 Ill. Reg. 43, p. 127, effective October 14, 1980; amended at 5 Ill. Reg. 14167, effective December 9, 1981; amended at 6 Ill. Reg. 2235, effective February 2, 1982; amended at 11 Ill. Reg. 1937, effective January 9, 1987; amended at 18 Ill. Reg. 5980, effective April 1, 1994; amended at 21 Ill. Reg. 3208, effective March 3, 1997; amended at 34 Ill. Reg. 11768, effective July 30, 2010; amended at 35 Ill. Reg. 7701, effective April 29, 2011; amended at 38 Ill. Reg. 19538, effective September 22, 2014; amended at 43 Ill. Reg. 11672, effective September 27, 2019; amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: APPLICABILITY AND DEFINITIONS

**Section 100.1 Authority and Applicability**

- a) This Part governing practice and procedure for administrative hearings is promulgated pursuant to Section 5-10(a)(i) of the Illinois Administrative Procedure Act (IAPA). Subpart B provides rules for ~~Department~~the Department's ~~general~~ hearings. Subpart C provides rules ~~specifically~~ for hearings under the Smoke Free Illinois Act.
- b) This Part governs all contested cases in the Department of Public Health, State of Illinois, except as noted in subsection (d) of this Section. ~~When~~If a licensing statute prescribes certain procedures or requirements for licensure hearings, those procedures or requirements will be followed as though they were set forth in this

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

Part. If there is a conflict between the licensing statute and this Part, the licensing statute shall prevail.

- c) This Part also applies to contested cases resulting from the Department's administration of any program on behalf of the United States government. If there is a conflict between federal regulations and this Part, federal regulations shall prevail.
- d) This Part does not govern informal administrative procedures established by the Department to resolve licensing issues or conflicts prior to initiating any action requiring a formal hearing.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.2 Definitions and Incorporated and Referenced Materials**

- a) Definitions

"Administrative law judge" or "hearing officer" ~~means~~shall mean any attorney licensed to practice law in Illinois, ~~appointed by the Director~~ to preside at an administrative hearing. ~~For the purpose of hearings conducted pursuant to Sections 2-110(d) and 3-410 of the Nursing Home Care Act (NHCA), or the ID/DD Community Care Act (ID/DD Act), the Department's Regional Health Officer in the region in which the facility is located may act as administrative law judge.~~

"Alleged violator" ~~means~~shall mean a person or entity issued a citation under the Smoke Free Illinois Act.

"Business Day" means any day when the Department's offices are open.

"Citation" ~~means~~shall mean a document alleging a violation of the Smoke Free Illinois Act.

"Contested case" ~~has~~shall have the meaning ascribed to it in Section 1-30 of the IAPA and shall include hearings pursuant to the Smoke Free Illinois Act (SFIA).

"Day" means a calendar day, unless otherwise specified.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

"Default" or "default judgment" ~~means~~~~shall mean~~ a written order entered after due process requirements of adequate notice and opportunity for hearing have been provided and the respondent fails to appear, defend, or answer; or a written order entered as an ultimate sanction for improper conduct. This order is considered a final order.

"Department" ~~means~~~~shall mean~~ the Illinois Department of Public Health.

"Director" ~~means~~~~shall mean~~ the Director or the designee of the Director of the Department of Public Health.

"Dismissal for Want of Prosecution" means any instance where a Complainant fails to actively participate in a case which they have initiated.

"Electronic mail" means a communication by electronic means which is automatically retained and stored and may be readily accessed or retrieved.

"Enforcing agency" has the meaning ascribed to it~~shall be as described~~ in Section 40 of the Smoke Free Illinois Act.

"Final order" or "final decision" ~~means~~~~shall mean~~ a written order that disposes of a case or action, either with or without the imposition of a penalty, sanction, or other action.

"License" ~~has~~~~shall have~~ the meaning ascribed to it in Section 1-35 of the IAPA.

"Licensing" ~~has~~~~shall have~~ the meaning ascribed to it in Section 1-40 of the IAPA.

"Person" ~~has~~~~shall have~~ the meaning ascribed to it in Section 1-60 of the IAPA.

"Personal information" includes any Social Security, Medicaid, Medicare, or health insurance numbers.

"Video conferencing application" refers to video conferencing applications such as WebEx, Zoom, Skype, etc.

- b) Referenced Materials  
The following federal laws, State laws and rules, and Illinois Supreme Court Rules are referenced in this Part:

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 1) Social Security Act (42 [U.S.C.](#)~~USC~~ 1395 and 1396)
- 2) Health Insurance Portability and Accountability Act of 1996 (HIPAA) (110 [U.S.C.](#)~~USC~~ 1936)
- 3) Illinois Administrative Procedure Act [5 ILCS 100]
- 4) Nursing Home Care Act [210 ILCS 45]
- ~~5)~~ [MC/DD Act \[210 ILCS 46\]](#)
- ~~65)~~ ID/DD Community Care Act [210 ILCS 47]
- ~~76)~~ Smoke Free Illinois Act (SFIA) [410 ILCS 82]
- ~~8)~~ [Specialized Mental Health Rehabilitation Act of 2013 \(SMHRF Act\) \[210 ILCS 49\]](#)
- ~~97)~~ Code of Civil Procedure [735 ILCS 5]
- ~~108)~~ Administrative Review Law [735 ILCS 5/Art. III]
- ~~11)~~ [Personal Information Protection Act \[815 ILCS 530\]](#)
- ~~12)~~ [Specialized Mental Health Rehabilitation Facilities Code \(77 Ill. Adm. Code 380\)](#)
- ~~139)~~ Health Facilities and Services Review Board: Health Facilities Planning Procedural Rules (77 Ill. Adm. Code 1130)
- ~~1410)~~ Illinois Supreme Court Rule 216: Admission of Fact or of Genuineness of Documents
- ~~1511)~~ Illinois Supreme Court Rule 13: Appearances – Time to Plead – Withdrawal

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

## SUBPART B: GENERAL HEARINGS

**Section 100.3 Parties to Hearings**

- a) Except for hearings conducted pursuant to the [Nursing Home Care Act \(NHCA\)](#), [MC/DD Act](#), [SMHRF Act](#), or the ID/DD Act, the parties to an administrative hearing before the Department are the Department (as Complainant) and the Respondent.
- b) For hearings conducted pursuant to the NHCA, [MC/DD Act](#), [SMHRF Act](#), or the ID/DD Act:
  - 1) In a Complainant's hearing (Section 3-702(g) of the NHCA, [MC/DD Act](#), or the ID/DD Act), the parties are the Department and the Complainant. The facility that was investigated may participate as a third party (see Section 100.6 of this Part).
  - 2) In a denial of access hearing (Section 2-110(d) of the NHCA, [MC/DD Act](#), or the ID/DD Act), the parties are the person who requested a hearing based on denial of access to a facility and the facility.
  - 3) In an involuntary transfer/discharge hearing, the parties are the resident who is to be transferred/discharged and the facility.
  - 4) In all other NHCA, [MC/DD Act](#), [SMHRF Act](#), or ID/DD Act hearings, the parties are the Department (as Complainant) and facility (as Respondent). If the action resulted from a complaint filed with the Department, the person who filed the complaint may participate as a third party.
  - 5) A third party shall file an appearance with the administrative law judge on or before the date of the prehearing conference, if one is scheduled, or prior to the hearing date if no prehearing conference was scheduled.
- c) A Respondent or alleged violator is a person or entity against whom a complaint or petition is filed or to whom a citation or notice of an opportunity for hearing is directed.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

**Section 100.4 Appearance – Right to Counsel**

- a) Any party to a proceeding may appear and be represented by a private attorney authorized to practice law in the State of Illinois at ~~the party's~~<sup>his or her</sup> own cost. Any individual party may waive this right and represent himself or herself. For hearings conducted pursuant to Sections 2-~~110~~<sup>100</sup>(d) and 3-410 of the NHCA, ~~the MC/DD Act~~, and the ID/DD Act, a visitor or resident shall have the option of being represented by a non-attorney of his or her choosing. A corporation, a limited liability company, partnership, association, or certified local health department shall appear and be represented only by an attorney authorized to practice law in the State of Illinois. A shareholder, corporate officer, employee, or member of the board of directors may not appear or represent a corporation or association unless that individual is authorized to practice law in the State of Illinois.
- b) All persons appearing in proceedings before the Department, including a visitor's or resident's non-attorney representative, shall conform to the standards of ethical conduct required of attorneys before the courts of Illinois. If any person or attorney does not conform to those standards, the administrative law judge may decline to permit that person to appear in any proceeding.
- c) Any attorney or other person appearing before the Department as a representative of a visitor or resident shall file an Appearance form containing: the name of the party represented; the name, address, ~~electronic mail address~~, and telephone number of the attorney or representative; an affirmative statement that the attorney is or is not duly licensed in the State of Illinois; and the written signature of the attorney or representative.
- d) Special appearances are not recognized. The initial appearance, regardless of form, is deemed a general appearance.
- e) An attorney may withdraw his or her appearance and/or representation only upon motion and appropriate ruling by the administrative law judge in accordance with Illinois Supreme Court Rule 13. However, attorneys may be substituted without motion upon notice to all parties and the administrative law judge if the substitution will not delay the proceedings, a statement to that effect is contained in the notice, and a substitute Appearance form is filed concurrently with the notice.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.5 Emergency Action**

*If the Director finds that the public interest, safety, or welfare imperatively requires emergency action, and if the Director incorporates a finding to that effect in an order, summary suspension of a license or summary suspension of authorization to conduct a particular activity may be ordered, pending proceedings for revocation, termination or other action. Those proceedings shall be promptly instituted and determined. (Section 10-65 of the IAPA)*

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.6 Hearings Requested by Complainants Pursuant to Section 3-702 of the Nursing Home Care Act, Section 3-704 of the MC/DD Act, or Section 3-704 of the ID/DD Community Care Act**

Pursuant to Section 3-702(g) of the NHCA, Section 3-704 of the MC/DD Act, and Section 3-704 of the ID/DD Act, a complainant who is dissatisfied with the determination or investigation of his or her complaint by the Department may request a hearing. (Section 3-702(g) of the NHCA, Section 3-704 of the MC/DD Act, and Section 3-704 of the ID/DD Act). Any complainant requesting a hearing shall be deemed to have consented in writing to disclosure of his or her name and shall further agree to accept service of all documents in this matter by electronic mail, provided that the complainant has an electronic mail address and does not object to same.

- a) The parties to administrative hearing pursuant to this Section are the Department and the Complainant. *The facility shall be given notice of any such hearing and may participate in the hearing as a third party* (Section 3-702(g) of the NHCA, Section 3-704 of the MC/DD Act, and Section 3-704 of the ID/DD Act). A request to participate as a third party must be filed in accordance with Section 100.3(b)(5) of this Part.
- b) For the purposes of this Section, a Complainant is an individual who has filed a complaint pursuant to the NHCA, the MC/DD Act, Section 3-704 of the MC/DD Act, and Section 3-704 of ~~or~~ the ID/DD Act. If the individual filing the complaint indicates that she or he is acting as the agent of an organization or another individual, and so requests, the organization or other individual will be the Complainant for the purposes of this Section. In that case, the individual who acted as agent for the organization or other individual will be a "referring agent". Unless objected to by the Complainant, the referring agent shall be entitled to

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

receive Notice of Complaint Determination and any request for hearing made pursuant to this Part.

- c) In accordance with Sections 3-703 through 3-712 of the NHCA, [Section 3-704 of the MC/DD Act, and Section 3-704 of](#) ~~and~~ the ID/DD Act, the Director shall designate an administrative law judge to conduct hearings requested by dissatisfied Complainants. All hearings shall be conducted pursuant to the provisions of this Part.
- d) The Department shall not release or produce copies of any record containing the personal health information of any individual to a Complainant, as defined in this Section, unless the Complainant possesses legal authority under a written power of attorney, [guardianship](#), certified copy of a court order, or other written HIPAA compliant authorization.
- e) Dissatisfied Complainants pursuant to this Section shall have the opportunity to contest the adequacy of the Department's investigation and its determination as to whether the complaint was valid, invalid, or undetermined and also the Department's determination as to whether to issue any violation as a result of the determination. Whenever "determination" is used in this Section, it shall include any investigation resulting in the determination.
- f) Dissatisfied Complainants pursuant to this Section do not have the opportunity to contest any other determinations or decisions of the Department [regarding the adequacy and completeness of the investigation](#).
- g) Nothing contained in this Section shall be deemed to entitle a dissatisfied Complainant to additional hearings or to a rehearing of a case that has already been the subject of a formal administrative hearing or a Final Order. [Administrative review is set out in the Acts listed in 106\(a\)\(1\).](#)
- h) Complainants pursuant to this Section shall carry the burden to prove, by a preponderance of the evidence, that the aforesaid determinations of the Department were improper.
- i) At the conclusion of the hearing, the administrative law judge shall prepare a report in accordance with Section 100.15, and make a recommendation to the Director specifying whether the complaint should be reinvestigated and/or any invalid or undetermined finding should be changed to a valid finding or the

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

Department should reconsider the failure to cite a facility with any violation.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.7 Initiation of a Contested Case**

- a) In contested cases, except those held pursuant to Section 100.6, the Department shall serve on the Respondent a Notice of Opportunity for an Administrative Hearing, which shall contain:
  - 1) *a statement of the time, place, and nature of the action;*
  - 2) *a statement of the legal authority and jurisdiction under which the hearing is to be held;*
  - 3) *a reference to the particular Sections of the applicable substantive and procedural statutes and rules;*
  - 4) *allegations of noncompliance;*
  - 5) *a statement of the procedure for requesting an administrative hearing (see Section 10-25 of the IAPA), including a date by which the request must be received by the Department, which must be at least 10 days after the Notice is mailed or personally served;*
  - 6) *unless the case is brought pursuant to Title XVIII (health insurance for the aged and disabled) or XIX (medical assistance) of the Social Security Act, or the NHCA, [the MC/DD Act](#), or the ID/DD Act, a statement setting forth the requirement of an Answer, pursuant to subsection (d) of this Section; and*
  - 7) *except where a more detailed statement is otherwise provided for by law, a short and plain statement of the matters asserted, the consequences of a failure to respond, and the official file or reference number. (Section 10-25 of the IAPA)*
- b) A person who receives a Notice of an Opportunity for an Administrative Hearing must submit a written request for a hearing to the Department. The request is to be sent to the Department at the address stated in the Notice and must be received

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

by the date set forth in the Notice. Failure to comply with this Section shall constitute a waiver of the person's right to an administrative hearing.

- c) Upon receipt of a timely written request for hearing, the Department shall issue a Notice of Hearing or Prehearing Conference. *The Notice of Hearing or Prehearing Conference shall contain:*
- 1) *a statement of the time, place, and nature of the hearing;*
  - 2) *a statement of the legal authority and jurisdiction under which the hearing is to be held; and*
  - 3) *the names and mailing addresses of the administrative law judge, all parties, and all other persons to whom the agency gives notice of the hearing, unless otherwise confidential by law. (Section 10-25 of the IAPA)*
- d) Unless the case is brought pursuant to Title XVIII or XIX of the Social Security Act, the NHCA, [the MC/DD Act](#), or the ID/DD Act, a written Answer to the Allegations of Noncompliance shall be filed by a Respondent. The Answer must be served on all parties within 20 days after receipt of the notice alleging noncompliance. However, if the Respondent fails to submit a timely written request for hearing, the Respondent waives its right to Answer. If a Respondent fails to file a timely Answer, each alleged violation of a statute or Department rule by the Respondent shall be deemed to have been judicially admitted and, therefore, no longer subject to dispute by the Respondent. If the Respondent has insufficient knowledge of the facts to form a belief as to the truth of the allegation, the Respondent may so state with an affidavit of insufficient knowledge. If the Respondent wishes to raise defenses that are affirmative in nature or would be likely to take the Department by surprise, the Respondent must do so in the Answer. If Affirmative Defenses are filed within an Answer, the Department shall reply to the Affirmative Defenses within 20 days after receipt of the Answer.
- e) A pleading may be freely amended at any time prior to the conclusion of a hearing. Amendments to Answers may be allowed upon proper motion at any time during the pendency of the proceedings on terms that are just and reasonable. However, a prior Answer shall be admissible and may be used to cross-examine the person preparing or verifying the prior Answer.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- f) All written documents provided for under this Section shall be liberally construed with a view toward doing substantial justice between the parties.
- g) Venue shall be the location designated in the Notice of Administrative Hearing. Venue may be moved to another location upon stipulation by all parties or upon a showing to and a finding by the administrative law judge that exceptional circumstances make it desirable, in the interest of justice, to allow a change of venue. Exceptional circumstances include, but are not limited to, age, infirmity, transmission of communicable disease including, but not limited to, COVID-19, or inability to travel due to ill health. However, mere inconvenience shall not constitute grounds for a change in venue.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.8 Motions**

- a) Motions, unless made during a hearing, shall be made in writing and shall set forth the relief or order sought and the legal authority for the action requested. Except as otherwise provided in this Part or by a specific statute, motions may seek any relief or order recognized in the Code of Civil Procedure and Rules of the Illinois Supreme Court, and shall include a reference to the applicable Section of the Code or Rules in both the heading and body of the Motion. Motions based on a matter that does not appear of record shall be supported by affidavit.
- b) Written motions shall be titled as to the party making the motion and the nature of the relief sought. The title shall be in capital letters and shall be placed either below the caption or to the right of the caption beneath the docket number. No motion shall be identically titled with any other motion. Examples of properly-titled motions: Respondent's Motion to Dismiss, Respondent's Second Motion to Dismiss.
- c) Motions directed at the pleadings, if not raised at the earliest opportunity, shall be deemed waived, absent a showing of exceptional circumstances.
- d) The administrative law judge shall not have the authority to dismiss, postpone, vacate, or overturn an Order or Notice issued by the Director, but may make a recommendation to the Director at any time that circumstances merit such a recommendation.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- e) Motions to continue a hearing shall be granted only for good cause shown. Motions for a continuance shall be in writing and ~~filed at least five working days prior to the hearing. Motions for a continuance~~ shall be made immediately upon ~~a when the~~ party becoming aware~~learns~~ that a continuance will be~~is~~ needed. The party moving for a continuance shall file an affidavit in support of their motion, which, at a minimum, states:~~Statements as to~~ when the party learned that a continuance was needed, the steps that were taken to avoid the need for a continuance, and the current reasons the continuance is needed. Circumstances may also be granted by agreement of the parties.~~shall be contained in the motion. After one continuance has been granted to a party, additional continuances may be granted to that party only if:~~
- ~~1) a hearing on the issue of whether to grant the continuance has been held and the administrative law judge finds that the moving party has presented sufficient evidence showing entitlement to another continuance; or~~
  - ~~2) there is an emergency; or~~
  - ~~3) all parties so stipulate.~~
- f) Whenever possible, as much of the hearing as possible shall be completed, and only those matters that must be continued shall be continued.
- g) If there is an unforeseen emergency, motions to continue a hearing may be made by telephone or by videoconferencing application, rather than in writing. Motions by telephone shall be made through a conference call involving the administrative law judge and all parties, and shall be confirmed within ~~five~~three business days by the filing of a written motion. Motions made by videoconferencing application shall involve the administrative law judge and all parties, and shall be confirmed within five business days by the filing of a written motion.
- h) Responses shall be in writing unless made at a prehearing conference or a hearing.
- i) On a motion to disqualify an administrative law judge made by any party, the administrative law judge who is the subject of the motion shall determine whether he or she should be disqualified on the basis of *bias or conflict of interest*, and shall remove himself or herself if a determination is made that bias or a conflict of interest exists. If the motion is granted, the Director, or their designee, shall

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

appoint a new administrative law judge. A motion for the disqualification of an administrative law judge shall be based upon the alleged bias or conflict of interest of the administrative law judge. *An adverse ruling, in and of itself, shall not constitute bias or conflict of interest.* (Section 10-30 of the IAPA) Motions for substitution of an administrative law judge pursuant to Section 2-1001(a) of the Code of Civil Procedure shall not be permitted.

- j) The following shall constitute bias or conflict of interest for the purpose of disqualification under subsection (i):
- 1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;
  - 2) The judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during that association as a lawyer concerning the matter, or the judge has been a material witness concerning it;
  - 3) The judge was, within the preceding three years, associated in the private practice of law with any law firm or lawyer currently representing any party in the controversy (provided that referral of cases when no monetary interest was retained shall not be deemed an association within the meaning of this subsection (j)) or, for a period of seven years following the last date on which the judge represented any party to the controversy while the judge was an attorney engaged in the private practice of law;
  - 4) The judge knows that any of the following persons has an economic interest in the subject matter in controversy or in a party to the proceeding, or has any other more than minimal interest that could be substantially affected by the proceeding:
    - A) the judge individually;
    - B) a fiduciary;
    - C) the judge's spouse, parent, or child, wherever residing; or
    - D) any other member of the judge's family residing in the judge's



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

household.

- k) Demands for a Bill of Particulars shall not be allowed.
- l) Requests for an extension of time other than to continue a hearing shall be in writing and may be granted for good cause shown.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.9 Form of Papers**

- a) Absent prior leave from the Director or the administrative law judge assigned to a given matter, all documents~~All papers~~ filed in any proceedings, except exhibits, shall be computer generated, with text being double-spaced and using a 12 point font~~typewritten or printed~~. All documents' margins shall be set at one (1) inch throughout the document. Long quotations shall be single spaced and indented.
- b) ~~All papers, except exhibits, shall be cut or folded so as not to exceed a width of 8½ inches and a length of 11 inches and shall have inside margins not less than one (1) inch wide. Whenever practical, all exhibits of a documentary character shall conform to said requirements.~~
- be) All pleadings, written motions, or notices filed in the administrative proceedings shall be dated and signed ~~in ink~~ by the party filing the paper or his or her attorney or representative.
- cd) Pleadings, written motions, and notices shall contain the docket number for the proceeding (once set), the mailing address and electronic mail address of the party filing the paper, provided that the complainant has an electronic mail address, or, if represented by an attorney or other representative, the name, ~~and~~ business address, electronic mail address, and telephone number (including area code) of such attorney or representative.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.10 Service**

- a) Notices under Section 100.7(a) shall be served either personally, ~~or~~ by certified mail or by electronic mail upon all parties (including complainants under the

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

NHCA, [the MC/DD Act](#), [the SMHRF Act](#), and [the ID/DD Act](#) when applicable) or their agents appointed to receive service of process unless the applicable licensing statute requires a different form of service, in which case service shall conform to the statute.

- b) Service to the last official [electronic mail or mailing](#) address of a party or agent provided to the Department by a party shall be considered in compliance with this Section. Notices and citations sent by certified mail [to the last known mailing address of a party or agent which are](#)~~that have been~~ returned to the Department as unclaimed or refused by the addressee shall be considered served. For purposes of this Section, the "last official [electronic or mailing](#) address" shall be: the [electronic mail and/or mailing](#) address listed on the most recent application submitted to the Department, unless the Department has been subsequently notified in writing of a change of address. For certified nursing assistants and habilitation aides, the "most recent application" shall be the information submitted by the training program or testing entity that qualified the individual to be entered on the registry.
- c) Service of pleadings or motions under this Section, unless otherwise provided for in this Section, shall be made by [any manner consistent with the provisions of Section 10-75 of the Illinois Administrative Procedure Act](#)~~delivering in person or by depositing in the United States Mail, properly addressed with postage prepaid, one copy to each party to the proceedings~~. When any party or parties have appeared by attorney, service upon the attorney shall be deemed service upon the party or parties. All pleading or motions under this Section shall also be served upon the administrative law judge.
- d) Proof of service under subsection (b) shall be by either:
- 1) certificate of attorney; or
  - 2) affidavit or verification by certification.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.11 Prehearing Conferences**

- a) [The administrative law judge shall schedule an initial prehearing conference for all cases, which may be conducted in-person, telephonically, or by](#)

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

videoconference. Subsequent prehearing conferences shall be scheduled by the administrative law judge, as necessary. Except for those cases arising under Section 2-110(d) and 3-410 of the NHCA, the complainant and respondent shall be prepared to discuss the following issues at the initial prehearing conference.~~A telephonic prehearing conference may be scheduled by the administrative law judge or Department or as a result of a request pursuant to subsection (b). This conference shall be held prior to the date of hearing and shall be for the purpose of considering:~~

- 1) the prospects for settlement of the matter and the length of time anticipated by both parties to reach a resolution;
  - 2) the simplification of the issues;
  - 3) amendments to the pleadings;
  - 4) the possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof;
  - 5) the limitation of the number of expert witnesses; ~~and~~
  - 6) any other matters that may aid in the disposition of the hearing; and
  - 7) a hearing date.
- b) In any proceedings under this Section in which the Department has not scheduled a prehearing conference, any party to the proceedings may request the scheduling of a prehearing conference. The request shall be made in writing and received by the administrative law judge at least five days prior to the scheduled date of hearing. The requesting party shall serve all other parties to the proceedings with a copy of the request.
- c) Upon the receipt of a request for a prehearing conference in accordance with subsection (b), the administrative law judge shall schedule the prehearing conference and notify all parties of the date, time, and place of the conference.
- d) After a prehearing conference, the administrative law judge shall make a written report that recites any action taken by the administrative law judge and any agreements made by the parties as to any of the matters considered. The

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

administrative law judge's written report for the initial prehearing conference shall set a date for holding an evidentiary hearing in the matter that will provide the parties with sufficient time to explore the possible settlement of the case, as well as adequate time to prepare the matter for hearing, if necessary.

- e) Any party may request additional prehearing conferences. The administrative law judge may deny or grant such a request, based on the nature of the motion.
- f) A certified stenographic reporter (court reporter) will not be present at a prehearing conference unless one of the parties to the proceeding requests the Department to make arrangements for a court reporter to be present. The request shall be received by the Department at least two working days in advance of the scheduled prehearing conference. The party requesting the presence of the court report shall be billed directly for the attendance fee of the reporter.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.12 Discovery**

- a) Prior to ~~or at~~ the initial prehearing conference, the Department shall provide all parties with a copy of all of the Department's inspection or investigative reports resulting in the Allegations of Noncompliance or the Notice of Opportunity for an Administrative Hearing. If no pre-hearing conference is held, the Department shall provide copies of the investigative reports prior to the hearing.
- b) At least 21 days prior to the commencement of the hearing, and consistent with Section 100.19(b), each party shall provide all other parties with a copy of any document that it may seek to offer into evidence. This subsection shall not require any party to again provide copies of those documents already provided by the Department under subsection (a).
- c) At least 21 days prior to the commencement of the hearing, each party shall provide all other parties with a list containing the name and address of any witness who may be called to testify.
- d) All parties shall be entitled to any exculpatory evidence in the Department's possession that tends to support the Respondent's position or that would impeach the credibility of a Department witness.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- e) The Respondent shall produce documents, books, records, or other evidence that relates directly to conduct of the business entity or other subject of the administrative hearing within seven days upon a written request by the Department.
- f) All parties shall be under a continuing obligation to promptly update requested discovery until the hearing is concluded without the necessity for further or additional requests.
- g) There shall be no depositions for discovery purposes or interrogatories allowed in any proceedings brought pursuant to this Part, except as agreed to by the parties.
- h) Requests to Admit Facts and Genuineness of Documents shall be allowed in accordance with Supreme Court Rule 216.
- i) Nothing contained in this Section shall preclude the parties from agreeing to the voluntary exchange of more information than is required.
- j) Copies of any record containing the personal health information of any individual shall not be shared with a third party (see Section 100.3(b)), unless that third party possesses legal authority to access personal health information under a written power of attorney, certified copy of a court order or other written HIPAA compliant authorization.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.13 Hearings**

- a) All hearings conducted in any proceedings shall be open to the public.
- b) Hearings will be conducted by the Director or by an administrative law judge appointed by the Director. If the Director conducts the hearings, any reference in this Section to the administrative law judge shall be read to refer to the Director.
- c) The administrative law judge shall have ~~all the~~ authority necessary to conduct a hearing, take all necessary actions to avoid delay, maintain order, to ensure the development of a clear and complete record, and to set reasonable limits on the scope of testimony or argument. He or she shall also have the authority to:

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 1) Administer~~administer~~ oaths and ensure that all witnesses are duly sworn;
  - 2) Issue~~issue~~ subpoenas;
  - 3) Hold~~hold~~ informal conferences for the settlement, simplification, or definition of issues;
  - 4) Make rulings on all~~dispose of~~ procedural requests, motions, and other similar matters;
  - 5) Continue~~continue~~ the hearing from time to time when necessary;
  - 6) Examine~~examine~~ witnesses; and
  - 7) Rule~~rule~~ upon the admissibility of any evidence or testimony which a party seeks to enter into the record.
- d) In instances where a party has failed to comply with an administrative law judge's rulings, orders, or instructions, the administrative law judge, may, on motion or sua sponte, enter such orders as are just, including, among others, the following:
- 1) that further proceedings be stayed until the order or rule is complied with;
  - 2) that the offending party be barred from filing any other pleadings relating to any issue to which the refusal or failure relates;
  - 3) that the offending party be barred from maintaining any particular claim or defense relating to that issue;
  - 4) that a witness be barred from testifying concerning that issue;
  - 5) that, as to claims or defenses asserted in any pleading to which that issue is material, an order of default be entered against the offending party or that his or her pleading be dismissed without prejudice; or
  - 6) that any portion of the offending party's pleadings relating to that issue be stricken and, if thereby made appropriate, judgment be entered as to the issue.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- e) In addition, the administrative law judge shall have the authority to prohibit the participation of any person who acts with disrespect towards the administrative law judge or the participants in a hearing, or who creates a disturbance, poses a safety risk, or otherwise impedes the administrative law judge from being able to conduct a hearing. Upon their own authority, or at the request of a party to the proceeding, the administrative law judge may recommend dismissal of an action when a party's conduct is so obstreperous, disruptive, or dangerous as to make the conduct of further proceedings in a matter impractical, potentially dangerous, or otherwise ill-advised.
- f) The administrative law judge shall direct all parties to enter their appearances on the record.
- g) Written opening arguments and written closing arguments shall not be permitted unless allowed by the administrative law judge~~all parties so stipulate~~.
- h) Parties may, by stipulation, agree upon any facts involved in the proceeding. The facts stipulated shall be considered as evidence in the proceeding. The administrative law judge shall accept all stipulations as conclusive fact binding the stipulating parties, unless he or she makes a finding on the record that the stipulation is made in bad faith, together with the basis of the bad faith determination. Unless precluded by law, disposition may be made of any contested case by stipulation, agreed settlement, consent order, default or motion.
- i) At any stage of the hearing or after all parties have completed the presentation of their evidence, the administrative law judge may call for further testimony, subject to cross-examination by the parties.
- j) *The rules of evidence and privilege as applied in civil cases in the circuit courts of this State shall be followed. Evidence not admissible under those rules of evidence may be admitted, however, (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Immaterial, irrelevant or unduly repetitious material shall be excluded. A copy of the whole or any part of an admissible book, record, paper or memorandum of the Department that is made by photostatic or other method of accurate and permanent reproduction shall be admitted in evidence at the hearing without further proof of the accuracy of the copy. Objections to evidentiary offers may be made and shall be noted in the record. (Section 10-40(a) of the IAPA)*

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- k) Official notice may be taken of matters of which the circuit courts of this State may take judicial notice. In addition, official notice may be taken of generally recognized technical or scientific facts within the Department's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The Department's experience, technical competence and specialized knowledge may be utilized in the evaluation of evidence. (Section 10-40(c) of the IAPA)
- j) A party may offer into evidence any of the following documents without foundation or other proof, provided that a copy of the document has been timely provided to all other parties in accordance with Section 100.12(b):
- 1) Records~~records~~ and reports of health care facilities, doctors, nurses, physical therapists or other health care providers; however, these records and reports shall not include affidavits or other documents specifically prepared for litigation;
  - 2) Investigation~~investigation~~ reports from governmental law enforcement agencies;
  - 3) Records of any regularly conducted activity; and,
  - 4) The~~the~~ enforcing agency's inspection or investigative reports produced pursuant to Section 100.12(a).
- m) Evidentiary depositions shall be allowed for~~For~~ good cause shown, including, but not limited to, age, infirmity, or inability to travel due to ill health,~~evidentiary depositions shall be allowed.~~
- n) Absent a showing of good cause, no document shall be offered into evidence that was not disclosed in accordance with the requirements of Section 100.12(b), and no witness shall testify whose name was not provided pursuant to Section 100.12(c). For purposes of this subsection, a showing of good cause shall mean that a party, through no fault of its own, did not have knowledge of a document to be offered into evidence or the name of a witness within the timeframe necessary for compliance with Section 100.12(b) and (c), and provided notice of the evidence or witness to the opposing party as soon as possible after learning about



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

the existence of the evidence or witness.

- ~~om~~) The Director or the administrative law judge~~Department~~ will make a record of the hearing in all administrative hearings under this Part, using such technology for recording the hearing as either the Director or the administrative law judge determines to be adequate for preserving a record of the hearing. Any person may make arrangements to obtain a copy of the record. The Department reserves the right to employ a certified stenographic reporter, and will do so when required by statute. Unless an applicable statute expressly provides otherwise, the actual costs of the stenographic reporter's attendance, if one was employed, and the transcript or transcripts shall be shared equally among the parties whenever a party requests review of a Department decision by the circuit court. The party shall provide payment prior to the Department's transmission of the transcript to the circuit court.
- ~~pn~~) Corrections to the transcript of the record limited to transcription errors may be made by the Director or an administrative law judge.
- ~~o~~) ~~If a party, or any person at the instance of or in collusion with a party, violates any ruling of the administrative law judge, the administrative law judge, on motion, may enter such orders as are just, including, among others, the following:~~
- ~~1) that further proceedings be stayed until the order or rule is complied with;~~
  - ~~2) that the offending party be barred from filing any other pleadings relating to any issue to which the refusal or failure relates;~~
  - ~~3) that the offending party be barred from maintaining any particular claim or defense relating to that issue;~~
  - ~~4) that a witness be barred from testifying concerning that issue;~~
  - ~~5) that, as to claims or defenses asserted in any pleading to which that issue is material, an order of default be entered against the offending party or that his or her pleading be dismissed without prejudice; or~~
  - ~~6) that any portion of the offending party's pleadings relating to that issue be stricken and, if thereby made appropriate, judgment be entered as to the issue.~~

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- p) ~~At any time, the administrative law judge may order the removal of any person from the hearing room who is creating a disturbance, whether by physical actions, profanity or otherwise engaging in conduct that disrupts the hearing.~~
- q) At the request of any party, the administrative law judge may exclude all witnesses from the hearing room, or, in the case of video conferenced proceedings, by barring witnesses from the videoconference until such time as they have first testified in the hearing, except that each party or a representative of a party, in addition to legal counsel, shall be allowed to remain.
- r) All objections shall be raised using a short and concise statement of the basis for the objection.
- s) The administrative law judge shall have the authority to conduct hearings on motions and other matters by telephonic or other electronic means, so long as all parties of record are afforded the option to attend using a similar electronic method. If the administrative law judge permits the use of electronic means, the administrative law judge and all parties may choose to participate from any location. However, if a controlling statute mandates the location of a hearing, all parties shall be afforded the option to attend from a statutorily mandated location.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.15 Administrative Law Judge's Report and Recommendations**

At the conclusion of a hearing at which the Director has not presided, the administrative law judge shall make a written report of the hearing, with his or her findings of fact and conclusions of law and his or her recommendations, if any, to the Director. ~~The report shall be accompanied by a transcript of the record, all exhibits admitted into evidence, copies of all pleadings and documents or evidence made a part of the record and any other material which is deemed to be a part of the record.~~

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.17 Final Orders**

- a) A written final order shall be issued in every contested case. *A final order shall include findings of fact and conclusions of law, separately stated. All final orders*

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

*shall specify whether they are final and subject to the Administrative Review Law and any applicable licensing statute. (Section 10-50 of the IAPA)*

- b) A final order shall be served on *parties or their agents appointed to receive service of process*, by any means that will satisfy the requirements for service of process under Section 10-25 of the IAPA, ~~*either personally or by registered or certified mail. (Section 10-50 of the IAPA)*~~

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.19 Miscellaneous**

- a) Ex parte consultation. *Except in the disposition of matters that the Department is authorized by law to entertain or dispose of on an ex parte basis, the administrative law judge or Director shall not, after notice of hearing, communicate directly or indirectly, in connection with any other issue of fact, with any person or party, his or her representative, or any person interested in the outcome of the proceeding, except upon notice and opportunity for all parties to participate. However, a Department member may communicate with other members of the Department and an administrative law judge may have the aid and advice of one or more personal assistants.*
- 1) *An ex parte communication received by the Director, any Department employee, or the administrative law judge shall be made a part of the record of the pending matter, including all written communications, all written responses to the communications, and a memorandum stating the substance of all oral communications and all responses made and the identity of each person from whom the ex parte communication was received.*
- 2) *Communications regarding matters of procedure and practice, such as the format of pleadings, number of copies required, manner of service, and status of proceedings, are not considered ex parte communications under this Section. (Section 10-60 of the IAPA)*
- b) Personal information. A party shall neither file in conjunction with any pleading, nor seek to introduce into evidence at any hearing, any document that contains unredacted personal information, as defined under Section 100.2. Administrative law judges shall reject the filing of any pleading that contains unredacted personal

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

information. Additionally, an administrative law judge shall not receive into evidence any document containing unredacted personal information.

- cb) Computation of Time. The time within which any act under this Section is to be done shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or a holiday as defined or fixed by statute in force in this State, and then it shall also be excluded. If the day succeeding the last day is a Saturday, Sunday or a holiday as defined or fixed by statute in force in this State, that day shall also be excluded.
- de) Construction of Rules. In case of any conflict between this Part and the IAPA or a specific licensing statute, the terms of the latter shall control.
- ed) If the hearing is being conducted pursuant to federal law and there is a conflict between this Part and federal procedural or evidentiary requirements, then the federal requirements shall control.
- fe) *Waiver. Compliance with any or all provisions concerning contested cases may be waived by written stipulation of all parties.* (Section 10-70 of the IAPA)

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART C: ADMINISTRATIVE HEARINGS UNDER  
THE SMOKE FREE ILLINOIS ACT

**Section 100.25 Initiation of a Hearing**

- a) An alleged violator receiving a citation pursuant to the Smoke Free Illinois Act (SFIA) shall submit a request for hearing to the enforcing agency that issued the citation. The enforcing agency shall forward the request to the Department for scheduling. Failure to request a hearing within 10 calendar days after the citation is received (or failure to attend a hearing when scheduled) or failure to pay the total amount of the fine, without objection, within 28 calendar days after the citation is issued will result in a final decision and order being entered against the alleged violator.
- b) *The Department shall serve written notice to all parties of the time, place, nature, and location of the hearing, not less than 10 days prior to the hearing.* (SFIA Section 40(d) and IAPA Section 10-25)

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- c) The Notice of Hearing *shall include the following:*
- 1) *A statement of the time, place, telephone number and nature of the hearing;*
  - 2) *A statement of legal authority and jurisdiction under which the hearing is to be held;*
  - 3) *The names, ~~and~~ mailing addresses, and electronic mail addresses of the Administrative Law Judge, all parties, and all other persons who are given notice of the hearing (IAPA Section 10-25);*
  - 4) *Copies of the original citation and any documents to be introduced pursuant to Section 100.60(d); and*
  - 5) *Information as to how the alleged violator can access a copy of this Part and the SFIA on the Department's website.*
- d) Notice shall be sufficient if served personally or if sent by certified mail to the alleged violator's address as it appears on the citation or as maintained with the Illinois Secretary of State as of the date of service.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.50 Motions**

All Motions brought in a proceeding taking place under the SFIA shall conform to the requirements for Motions set forth under Section 100.8.

- a) ~~Motions, unless made during a hearing, shall be made in writing and shall set forth the relief or order sought and the legal authority for the action requested. Except as otherwise provided in this Part or by specific statute, motions may seek any relief or order recognized in the Code of Civil Procedure and Rules of the Illinois Supreme Court, and shall include a reference to the applicable Section of the Code or Rules. Motions based on a matter that does not appear of record shall be supported by affidavit.~~

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- b) ~~All motions in cases brought under the SFIA, except those based on unforeseen or emergency circumstances, shall be made in writing. An opposing party shall have 28 days after any motion is served in which to serve a written response. The administrative law judge shall then rule on the motion. Oral arguments on motions will not be permitted unless all parties stipulate, in which situation the administrative law judge shall have the discretion to hear oral arguments.~~
- e) ~~Motions shall be served by delivery in person or by deposit in the United States Mail, properly addressed with postage prepaid, one copy to each party. Service upon the party's attorney shall be deemed service upon the party. Motions shall also be served upon the administrative law judge.~~
- d) ~~The title of the written motion shall include the name of the party making the motion and the action. The title shall be in capital letters and shall be placed either below the caption or to the right of the caption beneath the docket number. No motion shall be identically titled with any other motion. Examples of properly titled motions: Respondent's Motion to Dismiss, Respondent's Second Motion to Dismiss.~~
- e) ~~Motions or objections attacking the pleadings, jurisdiction or constitutionality, if not raised before the first pre-hearing conference, or if no pre-hearing conference is scheduled, no later than 10 days before the beginning of the hearing, shall be deemed waived. Motions to the pleadings shall not be granted unless the motion conforms to Section 100.8.~~
- f) ~~Motions for a continuance shall be made immediately when the party learns that a continuance is needed. Motions for a continuance shall be in writing, be filed more than five business days before the pre-hearing or hearing, and shall be granted only for good cause shown. Statements as to when the party learned that a continuance was needed, steps that were taken to avoid the continuance, and the current reasons the continuance is needed shall be contained in the motion. After one continuance has been granted to a party, additional continuances may be granted to that party only if:~~
  - 1) ~~The administrative law judge finds that the moving party has presented sufficient evidence showing entitlement to another continuance; or~~
  - 2) ~~There is an emergency; or~~

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 3) ~~All parties agree.~~
- g) ~~If there is an unforeseen emergency, motions for a continuance may be made by telephone rather than in writing. Motions by telephone shall be made through a conference call involving the administrative law judge and all parties and shall be confirmed within three business days by filing a written motion.~~
- h) ~~Whenever possible, as much of the hearing as possible shall be completed, and only those matters that must be continued shall be continued.~~

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.55 Discovery**

All discovery in SFIA cases shall proceed according to the provisions for discovery under Section 100.12. ~~a) General discovery (depositions, interrogatories, or requests to produce) shall not be permitted in SFIA cases. b) Disclosure of the following shall be required: 1) At least 21 days prior to the commencement of the hearing, each party shall provide all other parties with a copy of any document that it may offer into evidence. This subsection (b)(1) shall not require any party to again provide copies of documents already provided. 2) At least 21 days prior to the commencement of the hearing, each party shall provide all other parties with a list containing the name and address of any witness who may be called to testify. 3) The alleged violator shall be entitled to any exculpatory evidence in the enforcing agency's possession that tends to support the alleged violator's position or that might impeach the credibility of an enforcing agency witness. c) All parties shall be under a continuing obligation to promptly update requested discovery until the hearing is concluded without the necessity for further or additional requests.~~

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.60 Hearings**

- a) The administrative law judge shall be an attorney licensed to practice law in Illinois who is appointed by the Director to preside at an administrative hearing. The procedure for disqualification of an administrative law judge set out in Section 100.8(i) applies to this Subpart.
- b) All hearings shall be open to the public. The administrative law judge will determine whether to conduct the hearing through telephonic or videoconference

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

technology, based on travel distances for all parties and witnesses, the need to expedite the proceeding, or the availability of a location.

- 1) *The hearing shall be conducted at the nearest regional office of the Department, or in a location contracted by the Department in the county where the citation was issued.* (SFIA Section 40(d)) If the hearing is conducted electronically in accordance with subsection (b), unless otherwise agreed by all parties, at least one party or the administrative law judge shall attend the hearing at the nearest regional office or in a location contracted by the Department in the county where the citation was issued.
- 2) All exhibits intended to be offered into evidence during a telephonic hearing shall be received by the administrative law judge no later than 24 hours prior to the hearing. Exhibits may be submitted to the administrative law judge through U.S. Mail, electronic mail ~~(e-mail)~~ or fax.
- c) If no court reporter is present, the administrative law judge will make an audio [or audiovisual](#) recording of the proceedings and will maintain the recording until 90 days after the Director has entered a final order, unless a timely notice of civil administrative review is filed, in which case the administrative law judge will cause the audio recordings to be transcribed by a certified stenographic reporter and will cause the transcript to become part of the official record. A party requesting a copy of the transcription or initiating a legal review or appeal shall be billed directly for the copy.
- d) *The rules of evidence and privilege as applied in civil cases in the circuit courts of this State shall be followed. Evidence not admissible under those rules of evidence may be admitted, however (except where precluded by statute), if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.* Immaterial, irrelevant, or unduly repetitious material shall be excluded. *Objections to evidentiary offers may be made and shall be noted in the record.* (IAPA Section 10-40(a))
- e) A party may offer any of the following documents into evidence without further foundation:
  - 1) Official police investigative reports and narratives, prepared by sworn Illinois police officers, sheriff's deputies and officers of the Illinois State



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

~~or~~and Secretary of State Police, prepared in the course of their official duty;

- 2) The enforcing agency's inspection or investigative reports produced pursuant to Section 100.12(a); or
  - 3) Copies of any official records maintained by a governmental agency.
- f) The failure of an alleged violator to appear, after receiving proper notice under Section 100.25, shall result in a default judgment being entered by the administrative law judge. A default judgment entered against a violator after a failure to appear may be vacated by the Director within 15 days after entry in cases in which the alleged violator, upon written motion, can demonstrate good cause, as that term is construed under Illinois law, for the failure to appear. In cases in which an enforcing agency fails to have any witness appear, the administrative law judge shall dismiss the case against the alleged violator. An alleged violator's failure to appear or an enforcing agency's failure to have a witness appear in one particular case shall not have any effect on any other case.
- g) An alleged violator may request an expedited hearing by making a written request to the administrative law judge, who will then set the matter for hearing within 120 days after actual receipt of such a written request. However, no subsequent continuance shall deprive the Department of jurisdiction or compel a dismissal.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Home Health, Home Services, and Home Nursing Agency Code
- 2) Code Citation: 77 Ill. Adm. Code 245
- 3) 

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
245.20	Amendment
245.25	Amendment
245.40	Amendment
245.55	Amendment
245.71	Amendment
245.210	Amendment
- 4) Statutory Authority: Home Health, Home Services, and Home Nursing Agency Licensing Act [210 ILCS 55]
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking updates the Code in response to comments received during the First Notice period for amendments to implement the federal CARES Act, published at 45 Ill. Reg. 6156, which allows Home Health agencies to accept orders for Home Health services from nurse practitioners and physician assistants. Changes requested for Sections of the Code that were not open in the published rulemaking are included in this rulemaking to clarify the CARES Act changes in Section 245.20 (Definitions) with regard to the definition of "health care professional" and in Section 245.55 (Vaccinations) replacing "physician" with "health care professional" for consistency. This rulemaking also includes Department-approved updates regarding staff responsibilities for home services workers with regard to activities of daily living and required training and competency evaluations for skin care, ambulation, bathing, hair and nail care, positioning and transfer of clients, and respiratory care.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? Yes
- 10) Are there any other proposed rulemakings pending on this Part? No

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 11) Statement of Statewide Policy Objectives: This rulemaking does not create a State mandate.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning this rulemaking within 45 days after this issue of the *Illinois Register* to:

Department of Public Health  
Attention: Tracey Trigillo, Rules Coordinator  
Lincoln Plaza  
524 South 2nd Street, 6th Floor  
Springfield, IL 62701

(217)782-1159  
dph.rules@illinois.gov

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Home Health, Home Services, and Home Nursing agencies
  - B) Reporting, bookkeeping or other procedures required for compliance: Training and documentation of employee competence
  - C) Types of professional skills necessary for compliance: Nurses, home services workers
- 14) Small Business Impact Analysis:
- A) Types of businesses subject to the proposed rule:  
  
62 Health Care and Social Assistance
  - B) Categories that the agency reasonably believes the rulemaking will impact, including:
    - i. hiring and additional staffing
    - ii. regulatory requirements

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- vi. equipment and material needs
- vii. training requirements
- viii. record keeping

- 15) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the two most recent agendas because the need for the rulemaking was not anticipated.

The full text of the Proposed Amendments begins on the next page:

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

## TITLE 77: PUBLIC HEALTH

## CHAPTER I: DEPARTMENT OF PUBLIC HEALTH

## SUBCHAPTER b: HOSPITALS AND AMBULATORY CARE FACILITIES

## PART 245

HOME HEALTH, HOME SERVICES,  
AND HOME NURSING AGENCY CODE

## SUBPART A: GENERAL PROVISIONS

Section	
245.10	Purpose
245.20	Definitions
245.25	Incorporated and Referenced Materials

## SUBPART B: OPERATIONAL REQUIREMENTS

Section	
245.30	Organization and Administration
245.40	Staffing and Staff Responsibilities
245.50	Services (Repealed)
245.55	Vaccinations
245.60	Annual Financial Statement
245.70	Home Health Aide Training
245.71	Qualifications and Requirements for Home Services Workers
245.72	Health Care Worker Background Check
245.75	Infection Control

## SUBPART C: LICENSURE PROCEDURES

Section	
245.80	Licensure Required
245.90	License Application
245.95	License Application Fee, Single or Multiple Licenses
245.100	Provisional License
245.110	Inspections and Investigations
245.115	Complaints
245.120	Violations
245.130	Adverse Licensure Actions

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 245.140 Penalties and Fines
- 245.150 Hearings

## SUBPART D: CLIENT/PATIENT SERVICES

- Section
- 245.200 Services – Home Health
- 245.205 Services – Home Nursing Agencies
- 245.210 Services – Home Services Agencies
- 245.211 Services – Alzheimer's Disease and Related Dementias
- 245.212 Services – Home Nursing Placement Agency
- 245.214 Services – Home Services Placement Agency
- 245.220 Client Service Contracts – Home Nursing and Home Services Agencies
- 245.225 Client Service Contracts – Home Nursing Placement Agency and Home Services Placement Agency
- 245.240 Quality Improvement Program
- 245.250 Abuse, Neglect, and Financial Exploitation Prevention and Reporting

AUTHORITY: Implementing and authorized by the Home Health, Home Services, and Home Nursing Agency Licensing Act [210 ILCS 55].

SOURCE: Adopted at 2 Ill. Reg. 31, p. 77, effective August 2, 1978; emergency amendment at 3 Ill. Reg. 38, p. 314, effective September 7, 1979, for a maximum of 150 days; amended at 3 Ill. Reg. 40, p. 153, effective October 6, 1979; emergency amendment at 4 Ill. Reg. 18, p. 129, effective April 21, 1980, for a maximum of 150 days; amended at 4 Ill. Reg. 40, p. 56, effective September 23, 1980; emergency amendment at 6 Ill. Reg. 5855, effective April 28, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 11006, effective August 30, 1982; amended at 7 Ill. Reg. 13665, effective October 4, 1983; codified at 8 Ill. Reg. 16829; amended at 9 Ill. Reg. 4836, effective April 1, 1985; amended at 14 Ill. Reg. 2382, effective February 15, 1990; amended at 15 Ill. Reg. 5376, effective May 1, 1991; amended at 18 Ill. Reg. 2414, effective January 22, 1994; emergency amendments at 20 Ill. Reg. 488, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 3273, effective February 15, 1996; amended at 20 Ill. Reg. 10033, effective July 15, 1996; amended at 22 Ill. Reg. 3948, effective February 13, 1998; amended at 22 Ill. Reg. 22050, effective December 10, 1998; amended at 23 Ill. Reg. 1028, effective January 15, 1999; amended at 24 Ill. Reg. 17213, effective November 1, 2000; amended at 25 Ill. Reg. 6379, effective May 1, 2001; amended at 26 Ill. Reg. 11241, effective July 15, 2002; amended at 28 Ill. Reg. 3487, effective February 9, 2004; amended at 28 Ill. Reg. 8094, effective May 26, 2004; amended at 29 Ill. Reg. 20003, effective November 28, 2005; amended at 31 Ill. Reg. 9453, effective June 25, 2007;

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

amended at 32 Ill. Reg. 8949, effective June 5, 2008; amended at 34 Ill. Reg. 5711, effective April 5, 2010; amended at 39 Ill. Reg. 16406, effective December 10, 2015; amended at 43 Ill. Reg. 9134, effective August 12, 2019; emergency amendment at 44 Ill. Reg. 5929, effective March 25, 2020, for a maximum of 150 days; emergency expired August 21, 2020; emergency amendment at 44 Ill. Reg. 14328, effective August 24, 2020, for a maximum of 150 days; emergency rule expired January 20, 2021; emergency amendment at 45 Ill. Reg. 1710, effective January 21, 2021, for a maximum of 150 days; emergency expired June 19, 2021; emergency amendment at 45 Ill. Reg. 6335, effective May 3, 2021, for a maximum of 150 days; amended at 45 Ill. Reg. 11077, effective August 27, 2021; amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

**Section 245.20 Definitions**

Act – the Home Health, Home Services and Home Nursing Agency Licensing Act.

Activities of Daily Living – include, but are not limited to, eating, dressing, bathing, toileting, transferring, or personal hygiene.

[Advanced Practice Registered Nurse or APRN – a person who is licensed as an advanced practice registered nurse under the Nurse Practice Act.](#)

Advocate – a person who represents the rights and interests of an individual as though they were the person's own, to realize the rights to which the individual is entitled, obtain needed services, and remove barriers to meeting the individual's needs.

*Agency – a home health agency, home nursing agency, or home services agency, unless specifically stated otherwise. (Section 2.03a of the Act)*

Agency Manager – the individual designated by the governing body or the entity legally responsible for the agency, who has overall responsibility for the organization and day-to-day operation of the home services or home nursing agency.

Applicant – a firm, partnership, or association, or any of their members, or, if the applicant is a corporation, any of its officers or directors, or the person designated

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

to manage or supervise the agency.

Audiologist – a person who has received a license to practice audiology pursuant to the Illinois Speech-Language Pathology and Audiology Practice Act.

Branch Office – a location or site from which an agency provides services within a portion of the total geographic area served by the parent agency. The branch office is part of the agency and is located sufficiently close to share administration, supervision and services in a manner that renders it unnecessary for the branch to be independently licensed.

Bylaws or Equivalent – a set of rules adopted by an agency for governing the agency's operation.

Client – an individual receiving services from a home nursing agency, a home services agency or a placement agency. This term includes the service recipient's advocate or designee.

Client Record – a written or electronic record that includes, but is not limited to, personal information, emergency notification information, plans of service agreed to between the client and the home services agency, a copy of the home services contract or agreement, and documentation of the services provided at each visit.

Clinical Note – a dated, written notation or electronic entry by a member of the health team of a contact with a patient, containing a description of signs and symptoms, treatment and any drug given, the patient's reaction, and any changes in physical or emotional condition.

Clinical Record – an accurate account of services and care provided for each patient that is maintained by a home health or home nursing agency in accordance with accepted professional standards.

Companionship – services that provide fellowship, care and protection for a client who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs. Services requested may include, but are not limited to: household work related to the care of the client, such as meal preparation, bed making, or laundry; shopping or errands; or other similar services.



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

"Data Driven" – an agency uses quality indicator data, including patient care, and other relevant data, in the design of its program. The data collected is used to monitor the effectiveness and safety of services and quality of care and to identify opportunities and priorities for improvement. The frequency and detail of the data collection is approved by the governing body of the agency.

*Department or IDPH – the Department of Public Health of the State of Illinois.*  
(Section 2.01 of the Act)

*Director – the Director of Public Health of the State of Illinois, or his or her designee.* (Section 2.02 of the Act)

Discharge Summary – the written report of services rendered, goals achieved, and final disposition at the time of discharge from service of a home health or home nursing agency.

Documentary Evidence – evidence that an agency covered under this Part maintains as documentation of its quality assessment and performance improvement program. Documentary evidence used to demonstrate the agency's operation to Centers for Medicare and Medicaid Services includes program scope, program data, program activities, performance improvement projects, and executive responsibilities.

Employee – a person who works in the service of another person, or company, under an express or implied contract for hire, under which the employer has the right to control the details of work performance for wages, salary, fee or payment.

Employee Prospect – a person or persons to whom an agency expects to extend an offer of employment.

Geographic Service Area – the area from which home health agency patients are drawn. This area is to be clearly defined by readily recognizable boundaries.

Health Care Professional – a physician licensed to practice medicine in all of its branches, a podiatrist, an advanced practice registered nurse (APRN) with full practice authority and licensed under the Nurse Practice Act ~~who has a written collaborative agreement with a collaborating physician that authorizes services under the Act~~, or a physician assistant, licensed under the Physician Assistant

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

Practice Act of 1987 ~~who has been delegated the authority to perform services under the Act by his or her supervising physician.~~

*Home Health Agency – a public agency or private organization that provides skilled nursing services and at least one other home health service as defined in this Part. (Section 2.04 of the Act)*

Home Health Agency Administrator – an employee of the home health agency who is any one of the following:

A physician who has experience in health service administration, with at least one year of supervisory or administrative experience in home health care or in related health provider programs;

A registered professional nurse (RN) who has experience in health service administration, with at least one year of supervisory or administrative experience in home health care or in related health provider programs;

An individual with an undergraduate degree with experience in health service administration, with at least one year of supervisory or administrative experience in home health care or in related health provider programs; or

An individual who meets the requirements for Public Health Administrator as contained in Section 600.300 of the Certified Local Health Department Code who has experience in health service administration, with at least one year of supervisory or administrative experience in home health care or in related health provider programs.

Home Health Aide – a person who provides nursing, medical, or personal care and emotional comfort to assist the patient toward independent living in a safe environment. A person may not be employed as a home health aide unless he/she meets the requirements of Section 245.70.

*Home Health Services – services provided to a person at his or her residence according to a plan of treatment for illness or infirmity prescribed by a physician licensed to practice medicine in all its branches, a licensed physician assistant, or a licensed advanced practice registered nurse ~~or podiatrist~~. Such services include part-time and intermittent nursing services and other therapeutic services such as*

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

*physical therapy, occupational therapy, speech therapy, medical social services or services provided by a home health aide. (Section 2.05 of the Act)*

*Home Nursing Agency – an agency that provides services directly, or acts as a placement agency, in order to deliver skilled nursing and home health aide services to persons in their personal residences. A home nursing agency provides services that would be required to be performed by an individual licensed under the Nurse Practice Act. Home health aide services are provided under the direction of a registered professional nurse or advanced practice registered nurse. A home nursing agency does not require licensure as a home health agency under the Act. "Home nursing agency" does not include an individually licensed nurse acting as a private contractor or a person that provides or procures temporary employment in health care facilities, as defined in the Nurse Agency Licensing Act. (Section 2.11 of the Act)*

Home Nursing Services – services that would be required to be performed by an individual licensed under the Nurse Practice Act on a shift schedule, one-time, full-time or part-time, and/or intermittent basis.

*Home Services Agency – an agency that provides services directly, or acts as a placement agency, for the purpose of placing individuals as workers providing home services for consumers ~~primarily~~ in their personal residences. Home services agency does not include agencies licensed under the Nurse Agency Licensing Act, the Hospital Licensing Act, the Nursing Home Care Act, the ID/DD Community Care Act, the MC/DD Act, the Specialized Mental Health Rehabilitation Act of 2013, or the Assisted Living and Shared Housing Act and does not include an agency that limits its business exclusively to providing housecleaning services. Programs providing services exclusively through the Community Care Program of the Illinois Department on Aging, the Department of Human Services Office of Rehabilitation Services, or the United States Department of Veterans Affairs are not considered to be a home services agency under the Act. (Section 2.08 of the Act)*

*Home Services or In-Home Services or In-Home Support Services – assistance with activities of daily living, housekeeping, personal laundry, and companionship provided to an individual in his or her personal residence, which are intended to enable that individual to remain safely and comfortably in his or her own personal residence. "Home services" or "in-home services" does not include services that would be required to be performed by an individual licensed*

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

*under the Nurse Practice Act.* (Section 2.09 of the Act) Home care services are focused on providing assistance that is not medical in nature, but is based upon assisting the client in meeting the demands of living independently and maintaining a personal residence, such as companionship, cleaning, laundry, shopping, meal preparation, dressing, and bathing.

*Home Services Worker or In-Home Services Worker – an individual who provides home care services to a consumer in the consumer's personal residence.* (Section 2.10 of the Act) The terms homemaker and companion are commonly used to refer to this type of worker.

Licensed Practical Nurse – a person who is licensed as a licensed practical nurse under the Nurse Practice Act.

Medical Social Worker – a person who is a licensed social worker or a licensed clinical social worker under the Clinical Social Work and Social Work Practice Act.

Occupational Therapist – a person who is licensed as an occupational therapist under the Illinois Occupational Therapy Practice Act and meets either or both of the following requirements:

Is a graduate of an occupational therapy curriculum accredited jointly by the Council on Medical Education of the American Medical Association and the American Occupational Therapy Association; or

Is eligible for the National Registration Examination of the American Occupational Therapy Association.

Occupational Therapy Assistant – a person who is licensed as an occupational therapy assistant under the Illinois Occupational Therapy Practice Act and meets the requirements for certification as an occupational therapy assistant established by the American Occupational Therapy Association.

Part Time or Intermittent Care – home health services given to a patient at least once every 60 days or as frequently as a few hours a day, several times per week.

Patient – a person who is under treatment or care for illness, disease, injury or conditions appropriately responsive to home health or home nursing services to

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

maintain health or prevent illness.

Patient Care Plan – a coordinated and combined care plan prepared by and in collaboration with each discipline providing service to the patient, to the patient's family, or, for home health agencies, to both.

*Person – any individual, firm, partnership, corporation, company, association or any other legal entity. (Section 2.03 of the Act)*

Personal Care Services – services that are furnished to a client in the client's personal residence to meet the client's physical, maintenance, and supportive needs, when those services are not considered skilled personal care, as described in this Section and Part, and do not require a physician's orders or the supervision of a nurse.

Physical Therapist – a person who is licensed as a physical therapist under the Illinois Physical Therapy Act and who meets the qualifications for a physical therapist under the Federal Conditions of Participation for Home Health Agencies established by the Centers for Medicare and Medicaid Services (42 CFR 484.1 through 484.40).

Physical Therapist Assistant – a person who is licensed as a physical therapist assistant under the Illinois Physical Therapy Act and who meets the qualifications for a physical therapist assistant under the Federal Conditions of Participation for Home Health Agencies established by the Centers for Medicare and Medicaid Services (42 CFR 484.1 through 484.40).

Physician – ~~any~~Any person licensed to practice medicine in all of its branches under the Medical Practice Act of 1987. For a patient who has received medical care in another state, or has moved from another state, and who has not secured the services of a physician licensed in Illinois, an individual who holds an active license to practice medicine in another state will be considered the physician for the patient during this emergency (as determined by the physician) as provided in Section 3 of the Medical Practice Act of 1987. An emergency may not extend more than six months in any case.

Physician Assistant - any person who meets the licensing requirements of the Physician Assistant Practice Act of 1987.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

*Placement Agency* – any person engaged for gain or profit, regardless of the agency tax status, in the business of securing or attempting to secure work for hire for persons seeking work or workers for employers. The term includes a private employment agency and any other entity that places a worker for private hire by a consumer in that consumer's residence for purposes of providing home services. The term does not include a person that provides or procures temporary employment in health care facilities, as defined in the Nurse Agency Licensing Act. (Section 2.12 of the Act) For the purposes of this Part, there are two types of placement agencies: Home Nursing Placement Agencies (see Section 245.212) and Home Services Placement Agencies (see Section 245.214). A placement agency does not provide ongoing, continuous client support and management of services.

*Plan of Treatment* – a plan based on the patient's diagnosis and the assessment of the patient's immediate and long-range needs and resources. The plan of treatment is established in consultation with, in the case of a home health agency, the home health services team, which includes the attending physician or podiatrist, pertinent members of the agency staff, the patient, and members of the family.

*Podiatrist* – a person who is licensed to practice under the Podiatric Medical Practice Act of 1987.

*Progress Notes* – a dated, written notation by a member of the health team, summarizing facts about care and the patient's response during a given period of time.

*Purchase of Services or Contractual* – the provision of services through a written agreement with other providers of services.

*Quality Assessment and Performance Improvement or QAPI* – the coordinated application of two mutually-reinforcing aspects of a quality management system. QAPI takes a systematic, comprehensive, and data-driven approach to maintaining and improving safety and quality in home health agencies while involving all home health caregivers in practical and creative problem solving. Quality assessment is the specification of standards for quality of service and outcomes, and is a process used throughout the organization to ensure care is maintained at acceptable levels in relation to those standards. Performance improvement is the continuous study and improvement of processes with the

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

intent to better services or outcomes, and to decrease the likelihood of problems, by identifying areas of opportunity.

Registered Professional Nurse or RN – a person who is licensed as a registered professional nurse under the Nurse Practice Act.

Skilled Nursing Services – those services that, due to their nature and scope, would require the performing individual to be licensed under the Nurse Practice Act. These services are acts requiring the basic nursing knowledge, judgment and skills acquired by means of completion of an approved nursing education program and include, but are not limited to: assessment of healthcare needs; nursing diagnosis; planning, implementation and nursing evaluation; counseling; patient education; health education; the administration of medications and treatments; and the coordination or management of a nursing or medical plan of care.

Skilled Personal Care – personal care that may be provided only by a home health aide, as defined in this Section, or an individual who is a certified or licensed health care professional under the laws of the State of Illinois.

Social Work Assistant – a person who has a baccalaureate degree in social work, psychology, sociology, or other field related to social work and has at least one year of social work experience in a health care setting.

Speech-Language Pathologist – a person who is licensed as a speech-language pathologist under the Illinois Speech-Language Pathology and Audiology Practice Act.

Student – an individual who is enrolled in an educational institution and who is receiving training in a health-related profession.

Subdivision – a component of a multi-function health agency, such as the home care department of a hospital or the nursing division of a health department, which independently meets the federal conditions of participation for home health agencies. A subdivision that has branches is regarded as a parent agency.

Substantial Compliance or Substantially Meets – meeting requirements except for variance from the strict and literal performance, which results in unimportant omissions or defects given the particular circumstances involved.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

Summary Report – a compilation of pertinent factors from the clinical and progress notes regarding a patient that is submitted to the patient's physician or podiatrist.

Supervision – authoritative procedural guidance by a qualified person of the appropriate discipline.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 245.25 Incorporated and Referenced Materials**

- a) The following federal statutes are referenced in this Part:

Civil Rights Act of 1964 (42 USC 1981 et seq.)

- b) The following federal regulations are incorporated by reference in this Part and apply only to Medicare certified agencies:

Department of Health and Human Services, Centers for Medicare and Medicaid Services, Home Health Services (42 CFR 484, October 1, ~~2020~~2018).

- c) The following guidelines of a federal agency are incorporated by reference in this Part:

Department of Health and Human Services, Centers for Disease Control and Prevention, 1600 Clifton Road, Atlanta, Georgia 30333:

- 1) General Best Practice Guidelines for Immunization: Best Practices Guidance of the Advisory Committee on Immunization Practices (May 4, 2021) available at <https://www.cdc.gov/vaccines/hcp/acip-recs/general-recs/index.html> ~~General Recommendations on Immunization, Morbidity and Mortality Weekly Report (MMWR) (February 8, 2002)~~
- 2) Guidelines for Hand Hygiene in Health-Care Settings (October 2002) available at <https://www.cdc.gov/mmwr/pdf/rr/rr5116.pdf>
- 3) Infection Control in Healthcare Personnel: Infrastructure and Routine Practices for Occupational Infection Prevention and Control Services (October 25, 2019) ~~Guidelines for Infection Control in Health Care~~



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

~~Personnel (June 1998)~~ available in two parts at  
<https://www.cdc.gov/infectioncontrol/pdf/guidelines/infection-control-HCP-H.pdf> and  
<https://www.cdc.gov/infectioncontrol/guidelines/healthcare-personnel/index.html>

- d) All incorporations by reference of federal regulations and guidelines in this Part refer to the regulations and guidelines on the date specified and do not include any amendments or editions subsequent to the date specified.
- e) The following State statutes are referenced in this Part:
  - 1) Administrative Review Law [735 ILCS 5/Art. III]
  - 2) Business Corporation Act of 1983 [805 ILCS 5]
  - 3) Illinois Administrative Procedure Act [5 ILCS 100]
  - 4) Nurse Practice Act [225 ILCS 65]
  - 5) Illinois Occupational Therapy Practice Act [225 ILCS 75]
  - 6) Illinois Physical Therapy Act [225 ILCS 90]
  - 7) Illinois Speech-Language Pathology and Audiology Practice Act [225 ILCS 110]
  - 8) Local Records Act [50 ILCS 205]
  - 9) Medical Practice Act of 1987 [225 ILCS 60]
  - 10) Health Care Worker Background Check Act [225 ILCS 46]
  - 11) Nurse Agency Licensing Act [225 ILCS 510]
  - 12) Clinical Social Worker and Social Work Practice Act [225 ILCS 20]
  - 13) Podiatric Medical Practice Act of 1987 [225 ILCS 100]

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 14) Assisted Living and Shared Housing Act [210 ILCS 9]
- 15) Code of Civil Procedure, Article VIII, Part 21 (Medical Studies) [735 ILCS 5/Art. VIII, Part 21]
- 16) Private Employment Agency Act [225 ILCS 515]
- 17) Unemployment Insurance Act [820 ILCS 405]
- 18) Workers' Compensation Act [820 ILCS 305]
- 19) Hospital Licensing Act [210 ILCS 85]
- 20) Nursing Home Care Act [210 ILCS 45]
- 21) Alzheimer's Disease and Related Dementias Services Act [410 ILCS 406]
- 22) ID/DD Community Care Act [210 ILCS 47]
- 23) MC/DD Act [210 ILCS 46]
- 24) Specialized Mental Health Rehabilitation Act of 2013 [210 ILCS 49]
- 25) [Physician Assistant Practice Act of 1987 \[225 ILCS 95\]](#)

f) The following State rules are referenced in this Part:

- 1) Department of Public Health, Certified Local Health Department Code (77 Ill. Adm. Code 600)
- 2) Department of Public Health, Practice and Procedure in Administrative Hearings (77 Ill. Adm. Code 100)
- 3) Department of Public Health, Long-Term Care Assistants and Aides Training Programs Code (77 Ill. Adm. Code 395).
- 4) Department of Public Health, Health Care Worker Background Check Code (77 Ill. Adm. Code 955)

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 5) Department of Public Health, Central Complaint Registry (77 Ill. Adm. Code 400)

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART B: OPERATIONAL REQUIREMENTS

**Section 245.40 Staffing and Staff Responsibilities**

- a) Home Health Administrator or Agency Manager. The administrator or agency manager shall have the following responsibilities:
- 1) Ensure that the agency is in compliance with all applicable federal, State and local laws;
  - 2) Be familiar with the applicable rules of the Department and maintain them within the agency;
  - 3) Familiarize all employees as well as providers through contractual purchase of services with the Act and the rules of the Department and make copies available for their use;
  - 4) Ensure that reports and records as required by the Department are completed, maintained and submitted;
  - 5) Maintain ongoing liaison with the governing body, staff members and the community;
  - 6) Maintain a current organizational chart to show lines of authority down to the patient or client level;
  - 7) Manage business affairs and the overall operation of the agency;
  - 8) Maintain personnel records, administrative records and all policies and procedures of the agency;
  - 9) Employ qualified personnel in accordance with job descriptions;
  - 10) Provide orientation of new staff, regularly scheduled in-service education

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

programs and opportunities for continuing education for the staff; and

- 11) Designate in writing the qualified staff member to act in the absence of the administrator.

b) Home Health Aide

- 1) When home health aide services are offered, the services shall be under the supervision of an RN in accordance with the plan of treatment. The RN shall assign the home health aide to a particular patient. The RN or the appropriate therapist shall prepare written instructions for patient care.
- 2) Duties of the home health aide may include:
  - A) Performing simple procedures as an extension of therapeutic services;
  - B) Skilled personal care and personal care, as defined in this Part;
  - C) Patient ambulation and exercise;
  - D) Household services essential to health care at home;
  - E) Assisting with medications that are ordinarily self-administered;
  - F) Reporting changes in the patient's or client's condition and needs to the RN or the appropriate therapist; and
  - G) Completing appropriate records.
- 3) For home health agencies, the RN or appropriate therapist shall make a supervisory visit to the patient's residence at least every two weeks either when the home health aide is present to observe and assist, or when the home health aide is absent.
  - A) If an area of concern in aide services is noted by the supervising RN or other appropriately skilled professional, then the supervising individual shall make an on-site visit to the location where the patient is receiving care in order to observe and assess the aide

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

while he or she is performing care no later than the next supervisory visit.

- B) An RN or other appropriately skilled professional shall make an annual on-site visit to the location where a patient is receiving care in order to observe and assess each aide while he or she is performing care.
  - C) The purpose of the supervisory visits is to assess relationships and determine that the aide furnishes care in a safe and effective manner by following the patient's plan, demonstrating competency with assigned tasks, complying with infection prevention and control policies and procedures, reporting changes in the patient's condition, honoring the patient's rights, and maintaining open communication.
- 4) For home nursing agencies, the RN shall make a supervisory visit to the patient's/client's residence at least every 60 days when the home health aide is present to observe and assist, or when the home health aide is absent.
- A) If an area of concern in aide services is noted by the supervising RN, then the supervising individual shall make an on-site visit to the location where the patient is receiving care in order to observe and assess the aide while he or she is performing care no later than the next supervisory visit.
  - B) An RN shall make an annual on-site visit to the location where a patient is receiving care in order to observe and assess each aide while he or she is performing care.
  - C) The purpose of the supervisory visits is to assess relationships and determine that the aide furnishes care in a safe and effective manner by following the patient's plan, demonstrating competency with assigned tasks, complying with infection prevention and control policies and procedures, reporting changes in the patient's condition, honoring patient's rights, and maintaining open communication.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- c) Home Services or In-Home Services Worker
- 1) As defined in this Part and under the Act, *home services or in-home services means assistance with activities of daily living , housekeeping, personal laundry, and companionship provided to an individual in his or her personal residence, which are intended to enable that individual to remain safely and comfortably in his or her own personal residence. Home services or in-home services does not include services that would be required to be performed by an individual licensed under the Nurse Practice Act.* (Section 2.09 of the Act) Home services are focused on providing assistance that is not medical in nature, but is based upon assisting the client in meeting the demands of living independently and maintaining a personal residence, such as companionship, cleaning, laundry, shopping, meal preparation, dressing, and bathing.
  - 2) Home services or in-home services workers shall provide services only in accordance with this Part.
  - 3) Duties of home services or in-home services workers may include the following:
    - A) Observation of client functioning and reporting changes to his or her supervisor or employer or to a person designated by the client;
    - B) Assistance with household chores, including cooking and meal preparation, cleaning and laundry;
    - C) Assistance in completing activities such as shopping and appointments outside of the home;
    - D) Companionship;
    - E) Completion of appropriate records documenting service provision; and
    - F) Assistance with activities of daily living and personal care.
  - 4) To delineate the types of services that can be provided by a home services worker, the following are examples of acceptable tasks and also

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

limitations when a more medical model of assistance would be needed to meet the higher needs of the client.

- A) Skin Care. A home services worker may perform general skin care assistance. Skin care may be performed by a home services worker only when skin is unbroken, and when any chronic skin problems are not active. The skin care provided by a home services worker shall be preventative rather than therapeutic in nature, and may include the application of non-medicated lotions and solutions, or of lotions and solutions not requiring a physician's prescription. Skilled skin care shall be provided only by an agency licensed as a home health or home nursing services agency. The home services worker may apply a simple bandage as first aid for a client. Skilled skin care includes wound care, dressing changes, application of prescription medications, skilled observation and reporting.
- i) The home services worker shall have complete training in first aid for a lay person;
- ii) The client or client's representative shall be able to provide ongoing feedback and advocate for their needs, including indications of potential harm or discomfort to the home services worker; and
- iii) The agency shall have conducted a competency evaluation of the home services worker's ability to employ the methods required to implement first aid effectively and safely.
- B) Ambulation. A home services worker may assist clients with ambulation. Clients in the process of being trained to use adaptive equipment for ambulation, such as walkers, canes or wheelchairs, require supervision by an agency licensed to provide home health or home nursing services during the period of training. Once the prescribing individual or the health care provider responsible for training the client and/or home services worker is comfortable with releasing the client to work on his or her own with the adaptive equipment, a home services worker may assist with ambulation.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- i) The home services worker shall have been trained in the methods required to assist those clients with adaptive equipment for ambulation, including training by a home healthcare provider when the adaptive equipment is recently prescribed;
  - ii) The client or client's representative shall be able to provide ongoing feedback and advocate for their needs, including indications of potential harm or discomfort to the home services worker; and
  - iii) The agency shall have conducted a competency evaluation of the home services worker's ability to employ the methods required to assist those clients who require the use of adaptive equipment for ambulation.
- C) Bathing. A home services worker may assist clients with bathing. When a client has skilled skin care needs or skilled dressings that will need attention before, during, or after bathing, the client shall be in the care of an agency licensed as a home health agency or a home nursing agency to meet those specific needs. Home services workers may assist individuals who are unable to be bathed in a tub or shower only when the following requirements are met:
- i) The home services worker shall have been trained in the particular methods required to perform a bed bath, including the observations of indications of potential harm or discomfort;
  - ii) The client or client's representative shall be able to participate in or direct the bathing process and provide ongoing feedback, including indications of potential harm or discomfort, to the home services worker; and
  - iii) The agency shall have conducted a competency evaluation of the home services worker's ability to employ the methods required to perform a bed bath. The agency shall



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

conduct annual training and competency evaluation for skills to perform a bed bath.

- D) Dressing. A home services worker may assist a client with dressing. This may include assistance with ordinary clothing and application of support stockings of the type that can be purchased without a physician's prescription. A home services worker may not assist with applying an elastic bandage that can be purchased only with a physician's prescription (the application of which involves wrapping a part of the client's body) or with applying a sequential compression device that can be purchased only with a physician's prescription unless the client has a healthcare professional order to allow the unlicensed home service worker to apply the compression stocking as a part of daily activities of living. The home services worker shall have been trained with the application, including the observation of indications of potential harm or discomfort.
- E) Exercise. A home services worker may assist a client with exercise. Passive assistance with exercise that can be performed by a home services worker is limited to encouraging normal bodily movement, as tolerated, on the part of the client, and encouragement with a prescribed exercise program. A home services worker shall not perform Passive Range of Motion.
- F) Feeding. A home services worker may provide assistance with feeding. The home services worker can assist the client by opening and measuring a pre-measured thickening product to be added to liquids as per client request and under direct client observation. Home services workers can assist clients with feeding when the client can independently swallow and be positioned upright. Assistance by a home services worker does not include syringe, tube feedings, and intravenous nutrition. Whenever there is a high risk that the client may choke as a result of the feeding, the client shall be in the care of an agency licensed as a home health or home nursing agency to fulfill this function.
- G) Hair Care. As a part of the broader set of services provided to clients who are receiving home services, home services workers

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

may assist clients with the maintenance and appearance of their hair. Hair care within these limitations may include shampooing with non-medicated shampoo or a physician-prescribed shampoo so long as the prescription shampoo is accompanied by an order indicating a home services worker may apply the shampoo~~that does not require a physician's prescription~~, drying, combing and styling hair.

- i) The home services worker shall have been trained in the methods required to apply non-medicated and prescribed shampoo, including the importance of observing any open skin lesion and shall document and report these to the agency and clients' emergency contact;
- ii) The client or client's representative shall be able to provide ongoing feedback and advocate for their needs, including indications of potential harm or discomfort to the home services worker; and
- iii) The agency shall have conducted a competency evaluation of the home services worker's ability to employ the methods required to apply non-medicated or prescribed shampoo effectively and safely. The agency shall conduct annual training and competency evaluation for skills to apply and observe clients during shampooing.

- H) Mouth Care. A home services worker may assist in and perform mouth care. This may include denture care and basic oral hygiene, including oral suctioning for mouth care. Mouth care for clients who are unconscious shall be performed by an agency licensed as a home health agency or home nursing agency.
- I) Nail Care. A home services worker may assist with nail care. This assistance may include soaking of nails, pushing back cuticles without utensils, and filing nails. Assistance by a home services worker shall not include nail trimming. Clients with a medical condition that might involve peripheral circulatory problems or loss of sensation shall be evaluated by the client's healthcare provider to allow a home services worker to file the client's nails or

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

be under the care of an agency licensed as a home health agency or home nursing agency to meet this need.

- i) The home services worker shall have been trained in the methods required to assist with nail care, including the importance of observing for and reporting of any potential signs of injury or harm for a client with peripheral circulatory conditions that would require nail care be provided by an agency licensed as a home health or home nursing services agency.
- ii) The client or client's representative shall be able to provide ongoing feedback and advocate for their needs, including indications of potential harm or discomfort to the home services worker; and
- iii) The agency shall have conducted a competency evaluation of the home services workers' ability to employ the methods required to perform nail care effectively and safely and to observe and report potential signs of injury or harm.

J) Positioning. A home services worker may assist a client with positioning when the client is able to identify to the personal care staff, either verbally, non-verbally or through others, when the position needs to be changed as instructed by the service plan, only when skilled skin care, as previously described, is not required in conjunction with the positioning. Positioning may include simple alignment in a bed, wheelchair, or other furniture.

- i) The home services worker shall have been trained in the methods required to monitor and observe verbal and non-verbal indications and cues from the client that re-positioning may be needed and shall be trained in the importance of following the service plan concerning the client's positioning needs, including, when possible, reminders to clients concerning the importance of repositioning.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

ii) The clients or client's representative shall be able to provide ongoing feedback (including non-verbal indications and cues) and advocate for their needs, including indications of potential harm or discomfort by the home services worker during any repositioning. The client's representative shall be able to assist with the transfer, either directly or by providing ongoing feedback, including indications of potential harm or discomfort, to the home services worker if the client representative is present when the positioning needs to be changed; and

iii) The agency shall have conducted a competency evaluation of the home services worker's ability to employ the methods required to perform repositioning effectively and safely as needed.

K) Shaving. A home services worker may assist a client with shaving only with an electric or a safety razor.

L) Toileting. A home services worker may assist a client to and from the bathroom; provide assistance with bed pans, urinals, and commodes; provide pericare; or change clothing and pads of any kind used for the care of incontinence.

i) A home services worker may empty or change external urine collection devices, such as catheter bags or suprapubic catheter bags. In all cases, the insertion and removal of catheters and care of external catheters is considered skilled care and shall not be performed by a home services worker.

ii) A home services worker may empty ostomy bags and provide assistance with other client-directed ostomy care only when there is no need for skilled skin care or for observation or reporting to a nurse. A home services worker shall not perform digital stimulation, insert suppositories, or give an enema.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- M) Transfers. A home services worker may assist with transfers only when the client has sufficient balance and strength to reliably stand and pivot and assist with the transfer either directly or by providing ongoing feedback, including indications of potential harm or discomfort, to the home services worker through either verbal or non-verbal indications and cues~~to some extent~~. Adaptive and safety equipment may be used in transfers, provided that the client and home services worker ~~and is~~ fully trained in the use of the equipment and the client can assist in the transfer by providing ongoing feedback, including indications of potential harm or discomfort to the home services worker~~can direct the transfer step by step~~. Adaptive equipment may include, but is not limited to, wheelchairs, tub seats, and grab bars. Gait belts may be used as a safety device for the home services worker as long as the worker has been properly trained in their use. A home services worker shall not assist with transfers when the client is unable to assist with the transfer. Home services workers may assist clients in the use of a mechanical or electrical transfer device only when the following conditions are met:
- i) The home services worker shall have been trained in the use of the mechanical or electrical transfer device by the licensed agency;
  - ii) The client or client representative shall be able to assist with~~direct~~ the transfer either directly or by providing ongoing feedback, including indications of potential harm or discomfort, to the home services worker through either verbal or non-verbal indications and cues~~step by step~~; and
  - iii) The agency shall have conducted a competency evaluation of the worker using the type of device that is available in the home.
- N) Medication Reminding. A home services worker may assist a client with medication reminding only when medications have been pre-selected by the client, a family member, a nurse, or a pharmacist and are stored in containers other than the prescription bottles, such as medication minders. Medication minder containers

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

shall be clearly marked as to day and time of dosage. Medication reminding includes: inquiries as to whether medications were taken; verbal prompting to take medications; handing the appropriately marked medication minder container to the client; and opening the appropriately marked medication minder container for the client if the client is physically unable to open the container. These limitations apply to all prescription and all over-the-counter medications. The home services worker shall immediately report to the supervisor, or, in the case of a placement worker, to the client or the client's advocate or designee, any irregularities noted in the pre-selected medications, such as medications taken too often or not often enough, or not at the correct time as identified in the written instructions.

- O) A home services worker shall not provide respiratory care. Respiratory care is skilled and includes postural drainage; cupping; adjusting oxygen flow within established parameters; nasal, endotracheal and tracheal suctioning; and turning off or changing tanks. However, home services workers may temporarily remove and replace a cannula or mask from the client's face for the purposes of shaving or washing a client's face and may provide oral suctioning. A home services worker may assist the client with changing the oxygen delivery system from a stationary system to a portable system when transporting a client outside of the home, as directed by the prescribing health care practitioner to enable client transportation, or in situations where there is a loss of electrical power in the client's home (stationary systems are electrically powered devices). For the purposes of this Section, a "stationary system" refers to an oxygen concentrator used for at-home oxygen therapy and are not intended to be fully mobile. For those home services workers that are assigned to clients who require continuous supplemental oxygen therapy, the home services worker may assist the client with changing of the delivery system from stationary to portable only when the following conditions are met:
- i) The assigned home services worker shall have received training in switching oxygen delivery systems from

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

stationary to portable and the risks associated with improper adjustment of O<sub>2</sub> flow rates; and

- ii) The agency seeking to have a home services worker assist a client with changing of oxygen delivery systems shall maintain an individual on staff that has been trained and is able to conduct training and administer competency evaluations for any home services worker assisting clients with changing of the delivery system from stationary to portable.

P) A home services worker may remind a client to perform client monitoring, including monitoring of heart rate, blood pressure, oxygen saturation, and temperature and weight. The home service agency shall not provide the client and/or family any service to interpret the data or to take clinical action of the monitoring results. The home services worker may assist the client with the application of the heart rate, blood pressure, and oxygen saturation device and assist the client with recording the device reading.

5) In addition to the exclusions prescribed in subsection (c)(4), home services workers shall not act in the following capacities:

- A) Provide skilled personal care services as defined in Section 245.20;
- B) Become or act as a power of attorney;
- C) Be involved in any financial transactions of the client outside of contracted services. In these cases, the home services worker shall follow agency policies in regard to securing receipts for items purchased and ensuring both client and worker signatures documenting those expenditures;
- D) Perform or provide medication setup for a client; and
- E) Other actions specifically prohibited by agency policy or other State laws.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 6) Supervision of a home services worker shall include the following (these provisions do not apply to placement agencies):
  - A) An individual who is in a supervisory capacity shall be designated and available to the worker for responses to questions at all times.
  - B) On-site supervision shall take place at a minimum of every 90 days or more often if the plan of service requires it. The supervisory visits may be made when the home services worker is present so that the supervisor may observe, or when the home services worker is absent so that the supervisor may assess relationships and determine whether the service plan is being met.
    - i) If an area of concern in the performance of a home service worker is noted by the supervisor, then the supervising individual shall make an on-site visit to the location where the client is receiving services in order to observe and assess the home service worker while he or she is performing care no later than the next supervisory visit.
    - ii) The supervisor shall make an annual on-site visit to the location where a client is receiving care in order to observe and assess each home service worker while he or she is performing care.
    - iii) The purpose of the supervisory visits is to assess relationships and determine that the home service worker furnishes care in a safe and effective manner by following the client's service plan, demonstrating competency with assigned tasks, complying with infection prevention and control policies and procedures, reporting changes in the patient's condition, honoring patient's rights, and maintaining open communication.
  - C) Supervision does not constitute time or an activity that can be billed as a service to the client or consumer.
- d) Licensed Practical Nurse



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 1) The licensed practical nurse may perform selected acts in accordance with the Nurse Practice Act and under the direction of an RN, including administering treatments and medications in the care of the ill, injured or infirm; health maintenance; and illness prevention.
  - 2) The licensed practical nurse shall report changes in the patient's condition to the RN, and these reports shall be documented in the clinical notes.
  - 3) The licensed practical nurse shall prepare clinical notes for the clinical record.
- e) Medical Social Worker. When medical social services are provided, the social worker or social work assistant under the supervision of a social worker shall provide the services in accordance with the plan of treatment. These services shall include the following:
- 1) Assist the physician or podiatrist and other members of the health team in understanding significant social and emotional factors related to the patient's health problems.
  - 2) Assess the social and emotional factors to estimate the patient's capacity and potential to cope with the problems of daily living.
  - 3) Help the patient and family to understand, accept, and follow medical recommendations and provide services planned to restore the patient to the optimum social and health adjustment within the patient's capacity.
  - 4) Assist the patient and family with personal and environmental difficulties that predispose toward illness or interfere with obtaining maximum benefits from medical care.
  - 5) Use all available resources, such as family and community agencies, to assist the patient to resume life in the community or to live within the disability.
  - 6) Observe, record and report social and emotional changes.
  - 7) Prepare clinical and progress notes for the clinical record.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 8) Supervise the social work assistant, which shall include the following:
  - A) A licensed social worker shall be accessible by telephone to the social work assistant at all times while the social work assistant is treating patients.
  - B) On-site supervision shall take place every four to six visits. The supervisory visits may be made either when the social work assistant is present so that the supervisor may observe and assist, or when the social work assistant is absent so that the supervisor may assess relationships and determine whether goals are being met.
  - C) Supervision does not constitute treatment.
  - D) The supervisory visit shall include a complete on-site assessment, an on-site review of activities with appropriate revision of treatment plan, and an assessment of the use of outside resources.
- f) Occupational Therapist and Occupational Therapy Assistant. When occupational therapy services are required, an occupational therapist or an occupational therapy assistant under the supervision of an occupational therapist shall provide the services in accordance with the plan of treatment and within the licensee's scope of practice as established by the Illinois Occupational Therapy Practice Act. These services shall include the following:
  - 1) Instruct other health team personnel, including, when appropriate, home health aides and family members in certain phases of occupational therapy in which they may work with the patient.
  - 2) Prepare clinical and progress notes for the clinical record.
  - 3) Supervise the occupational therapy assistant, which shall include the following:
    - A) A licensed occupational therapist shall be accessible by telephone to the occupational therapy assistant at all times while the occupational therapy assistant is treating patients.
    - B) On-site supervision shall take place every four to six visits. The

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

supervisory visits may be made either when the occupational therapy assistant is present so that the supervisor may observe and assist, or when the occupational therapy assistant is absent so that the supervisor may assess relationships and determine whether goals are being met.

- C) Supervision does not constitute treatment.
- D) The supervisory visit shall include a complete on-site functional assessment, an on-site review of activities with appropriate revision of treatment plan, and an assessment of the use of outside resources.

g) Physical Therapist and Physical Therapist Assistant

- 1) When physical therapy services are provided, a physical therapist or a physical therapist assistant under the supervision of a physical therapist shall provide the services in accordance with the plan of treatment and within the licensee's scope of practice as established by the Illinois Physical Therapy Act. These services shall include the following:
  - A) Instruct other health team personnel, including, when appropriate, home health aides and family members, in certain phases of physical therapy with which they may work with the patient.
  - B) Instruct the patient and family in the total physical therapy program.
  - C) Prepare clinical and progress notes for the clinical record.
- 2) Supervision of the physical therapist assistant shall include the following:
  - A) A licensed physical therapist shall be accessible by telephone to the physical therapist assistant at all times while the physical therapist assistant is treating patients.
  - B) On-site supervision shall take place every four to six visits. The supervisory visits may be made either when the physical therapist assistant is present so that the supervisor may observe and assist, or

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

when the physical therapist assistant is absent so that the supervisor may assess relationships and determine whether goals are being met.

- C) Supervision does not constitute treatment.
  - D) The supervisory visit shall include a complete on-site functional assessment, an on-site review of activities with appropriate revision of treatment plan, and an assessment of the utilization of outside resources.
- 3) The physical therapist assistant shall:
- A) Be directed by and under the supervision of a licensed physical therapist and within the licensee's scope of practice as established by the Illinois Physical Therapy Act;
  - B) Administer the physical therapy program as established by the physical therapist;
  - C) Observe patient's progress and response to treatment, and report to the physical therapist; and
  - D) Confer with members of the health care team for planning, modifying and coordinating treatment programs.
- h) Registered Professional Nurse. The RN may perform selected acts in accordance with the Nurse Practice Act. Skilled nursing services shall be provided by an RN in accordance with the plan of treatment. The RN shall:
- 1) Be responsible for the observation, assessment, nursing diagnosis, counsel, care and health teaching for patients, and health maintenance and illness prevention for others;
  - 2) Maintain a clinical record for each patient receiving care;
  - 3) Provide progress notes to the patient's physician or podiatrist about patients under care when the patient's conditions change or there are deviations from the plan of care, or at least every 60 days for a home

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

health agency and every 90 days for a home nursing agency;

- 4) In the case of an RN working as a part of a home health or home nursing agency, make home health aide assignments, prepare written instructions for the aide, and supervise the aide in the home;
  - 5) Direct the activities of the licensed practical nurse;
  - 6) Administer medications and treatments as prescribed by the patient's physician or podiatrist; and
  - 7) Act as the coordinator of the health care team in order to maintain the proper linkages within a continuum of care.
- i) Speech-Language Pathologist. The speech-language pathologist may perform selected acts in accordance with the Illinois Speech-Language Pathology and Audiology Practice Act. When required, speech therapy services shall be provided by a speech-language pathologist in accordance with the plan of treatment. The speech-language pathologist shall:
- 1) Assist the physician in determining and recommending appropriate speech and hearing services;
  - 2) Evaluate the patient's speech and language abilities and establish a plan of care;
  - 3) Provide rehabilitation services for speech and language disorders;
  - 4) Record and report to the patient's physician the patient's progress in treatment and any changes in the patient's condition and plan of care;
  - 5) Instruct other health team personnel and family members in methods of assisting the patient in improving communication skills; and
  - 6) Prepare clinical and progress notes for the clinical record.
- j) Audiologist. The audiologist may perform selected acts in accordance with the Illinois Speech-Language Pathology and Audiology Practice Act. When audiology services are required, an audiologist shall provide the services in

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

accordance with the plan of treatment. The audiologist shall:

- 1) Administer diagnostic hearing tests to evaluate the patient's audiological abilities;
  - 2) Assess the patient's need for amplification;
  - 3) Provide rehabilitative services for hearing disorders;
  - 4) Instruct other health team personnel and family members in methods of assisting the patient in improving communication skills; and
  - 5) Record and report to the patient's physician the patient's response to rehabilitative intervention.
- k) Student Training Program. When an agency elects to participate with an educational institution to provide clinical experience for students as part of their health-related professional training, a written agreement between the agency and each educational institution shall specify the responsibilities of the agency and the educational institution. The agreement shall include, at a minimum, the following provisions:
- 1) The agency retains the responsibility for client care;
  - 2) The educational institution retains the responsibility for student education;
  - 3) Student and faculty performance expectations;
  - 4) Faculty supervision of undergraduate students in the clinic and the field;
  - 5) Ratio of faculty to students;
  - 6) Confidentiality regarding patient information;
  - 7) Required insurance coverage; and
  - 8) Provisions for the agency and faculty to jointly evaluate the students' performance and the training program.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 245.55 Vaccinations**

## a) Influenza

- 1) *A home health agency and home nursing agency shall annually administer or arrange for administration of a vaccination against influenza to each client/patient, in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention ~~that are most recent to the time of vaccination~~ ~~titled Morbidity and Mortality Weekly Report, General Recommendations on Immunization (see Section 245.25)~~, unless the vaccination is medically contraindicated or the client/patient has refused the vaccine. (Section 6.5 of the Act)*
- 2) The following activities by home health or home nursing agencies shall be considered to be "arranging for" a client/patient to receive an influenza vaccination:
  - A) Referring a client/patient to the ~~health care professional~~ ~~physician~~ who is supervising the client's/patient's home care, or to his/her primary ~~health care professional~~ ~~care physician~~; or
  - B) Referring a client/patient to the hospital affiliated with the home health agency; or
  - C) Referring a client/patient to the local health department or other community location (e.g., local pharmacy, influenza vaccine clinic, hospital) where influenza vaccinations are available; or
  - D) Arranging for the local health department or other private or community health organization to provide the vaccination in the client's/patient's home.
- 3) When a referral or arrangement is made, home health or home nursing agency staff shall assist the client/patient in developing a plan for implementing the referral or arrangement and shall assess implementation of the plan and document the outcome.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 4) *Influenza vaccination for all clients/patients age 65 or over shall be completed by November 30 of each year or as soon as practicable if vaccine supplies are not available before November 1. Home health or home nursing clients/patients whose services start after November 30, during the flu season, and until February 1, shall, as medically appropriate, receive an influenza vaccination prior to or upon service initiation or as soon as practicable if vaccine supplies are not available at the time of the service initiation, unless the vaccine is medically contraindicated or the client/patient has refused the vaccine. (Section 6.5(a) of the Act)*
- 5) For all clients/patients who are provided services between November 1 and February 28, the *home health* or home nursing agency shall document in the client's/patient's medical record that an annual vaccination against influenza was administered, arranged, refused, or medically contraindicated or that the client/patient is not a member of a vaccination priority population. (Section 6.5(a) of the Act)
- 6) The following shall be considered to be documentation approaches that meet the requirements of Section 6.5 of the Act:
  - A) Individual client/patient record entries identifying the assessment for the need of vaccination; date of offer or referral; client/patient response; administration, contraindication, or refusal; and any follow-up activities.
  - B) Standardized check-off form recording client/patient specific information, including the assessment for the need of vaccination; date of offer or referral; client/patient response; administration, contraindication, or refusal; and any follow-up activities.
- b) Pneumococcal pneumonia
  - 1) *A home health or home nursing agency shall administer or arrange for administration of a pneumococcal vaccination, in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention that are most recent to the time of vaccination*~~titled Morbidity and Mortality Weekly Report,~~



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

~~General Recommendations on Immunization (see Section 245.25)~~, to each client/patient who is age 65 or over and who has not received this immunization prior to or upon service initiation, unless the client/patient refuses the offer for vaccination or the vaccination is medically contraindicated. (Section 6.5(b) of the Act)

- 2) The following activities by home health or home nursing agencies shall be considered to be "arranging for" a home health client/patient to receive a pneumonia vaccination:
  - A) Referring a client/patient to the ~~health care professional~~physician who is supervising his/her home care, or to his/her primary ~~health care professional~~care physician; or
  - B) Referring a client/patient to the hospital affiliated with the home health agency; or
  - C) Referring a client/patient to the local health department or other community location (e.g., local pharmacy, clinic, hospital) where pneumonia vaccinations are available; or
  - D) Arranging for the local health department or other private or community health organization to provide the vaccination in the client's/patient's home.
- 3) When a referral or arrangement is made, home health or home nursing agency staff shall assist the client/patient in developing a plan for implementing the referral or arrangement and shall assess implementation of the plan and document the outcome.
- 4) *A home health or home nursing agency shall document in each client's/patient's medical record that a vaccination against pneumococcal pneumonia was offered and was administered, arranged, refused, or medically contraindicated or that the client/patient is not a member of a vaccination priority population. (Section 6.5(b) of the Act)*
- 5) The following shall be considered to be documentation approaches that meet the requirements of Section 6.5 of the Act:

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- A) Individual client/patient record entries identifying the assessment for the need of vaccination; date of offer or referral; client/patient response; administration, contraindication, or refusal; and any follow-up activities.
- B) Standardized check-off form recording client/patient specific information, including the assessment for the need of vaccination; date of offer or referral; client/patient response; administration, contraindication, or refusal; and any follow-up activities.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 245.71 Qualifications and Requirements for Home Services Workers**

- a) Each agency shall ensure and shall maintain documentation in the home services worker's employee file that all persons employed or providing services as an in-home services worker, and who are not otherwise licensed, certified or registered in accordance with Illinois law to render this care, comply with the following conditions:
  - 1) Does not have a disqualifying background check under the requirements of the Health Care Worker Background Check Act without a waiver;
  - 2) Has a copy of his or her Social Security card; and
  - 3) Has a visa or proof of citizenship in compliance with federal requirements for employment.
- b) Each placement agency shall require proof that the home service worker has completed a minimum of eight hours of training prior to his or her first assignment. The training shall include all of the items noted in subsection (e)(d).
- c) Each home services agency shall provide or arrange for a minimum of ~~ten~~<sup>eight</sup> hours of training for each home services worker. ~~Five~~<sup>Four</sup> hours of training shall be provided prior to the home services worker's first assignment, and the remaining ~~five~~<sup>four</sup> hours shall be provided within the worker's first 30 days after employment. The training shall include the components of subsection (e)(d). The home services agency may accept proof that the worker has successfully completed a training program at or through another licensed home services

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

agency within the prior year (previous 365 days) in lieu of providing or arranging for training, including a CNA who is approved on the Health Care Worker Registry. The agency shall give the home service worker, with proof of prior training within the prior year, and the CNA a competency evaluation prior to his or her first assignment. The home services agency shall not give a worker an assignment until the worker has first passed a competency evaluation given by the agency of the topics included in the first four hours of training. The competency evaluation shall ensure that the home services worker is competent to provide the services required in his or her first assignment. The worker shall be similarly tested following the remaining four hours of training.

- d) The placement agency may accept proof that the worker has successfully completed a training program at or through another licensed home services agency within the prior year (previous 365 days). The home services placement agency shall not give a worker an assignment until the worker has first passed a competency evaluation given by the agency. The competency evaluation shall ensure that the home services worker is competent to provide the services required in his or her assignment. The competency evaluation or proof of prior training at a licensed home services agency within the prior year shall address each of the ~~following~~ subjects outlined in subsection (e).÷

- e) Training for the home services worker shall address each of the following subjects below, in addition to the training requirements included in Section 245.40(c)(4)(A) through (N) and Section 245.40(c)(4)(P):

- 1) The employee's job responsibilities and limitations;
- 2) Communication skills relating to persons who are hard of hearing, have dementia, or have other special needs;
- 3) Observing, reporting and documenting client status and the care or service provided, including changes in functional ability and mental status demonstrated by the client;
- 4) Performing personal care tasks for clients, including: bathing; skin care; hair care; nail care; mouth care; shaving; dressing; feeding; assistance with ambulation; exercise and transfers; positioning; toileting; and medication reminding;

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 5) Assisting in the use of specific adaptive equipment, such as a mechanical lifting device, if the worker will be working with clients who use the device;
- 6) Basic hygiene and basic infection prevention and control practices;
- 7) Maintaining a clean, safe and healthy environment;
- 8) Basic personal and environmental safety precautions;
- 9) Recognizing emergencies and initiating emergency procedures, including basic first aid and implementation of a client's emergency preparedness plan;
- 10) Confidentiality of client's personal, financial and health information;
- 11) Understanding dementia;
- 12) Problem solving skills to care for patients with dementia who exhibit challenging behavior;
- 13) Behaviors that would constitute abuse or neglect and the legal prohibitions against these behaviors, as well as knowledge and understanding of abuse and neglect prevention and reporting requirements; and
- 14) Any other task that the agency may choose to have the worker perform.

**f)** All home services workers shall complete a minimum of ~~ten~~**eight** hours of training during each year of employment to maintain placement availability, based on either a calendar year or an anniversary date basis, whichever is selected by the agency. The initial ~~ten~~**eight** hours of training required in subsection (c) shall satisfy the annual training requirement for the home services worker's first year of employment. The annual training can include self-study courses with demonstration of learned concepts that are applicable to the employee's responsibilities. Training shall include:

- 1) Promoting client dignity, independence, self-determination, privacy, choice and rights;

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 2) Disaster procedures;
  - 3) Hygiene and infection control; ~~and~~
  - 4) Abuse and neglect prevention and reporting requirements; ~~and~~.
  - 5) Activities of daily living related to application of simple bandages, ambulation, bathing, application of compression stockings, feeding, application of prescription shampoo, nail care, client positioning, transfer of clients, and oxygen delivery systems (for home service workers assigned to work with clients who require oxygen delivery support) per Section 245.40(c)(4)(A) through (P).
- gf) All training shall be documented with the date of the training; the length of time spent on each training topic; instructors and their qualifications; short description of content; and staff member's signature or electronic certificate with a date and time stamp indicating completion.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART D: CLIENT/PATIENT SERVICES

**Section 245.210 Services – Home Services Agencies**

- a) Agencies licensed as home services agencies shall provide non-medical services, which may be provided directly by agency staff or through a contractual purchase of services, that are intended to assist clients with activities of daily living. Services may include, but are not limited to, activity of daily living support, personal care, medication reminding, housekeeping services, personal laundry, cooking, shopping, assistance in getting to and from appointments, maintenance of household records, and companionship. Each agency shall maintain a listing of the types of services offered by the agency, and the scope of the work to be provided under each area, which the agency shall distribute to clients before contracting with the client, with the signed contract, and when changes occur.
- b) If the agency provides services under contractual arrangements with a third party, it shall have a written agreement that includes, but is not limited to, the following:
  - 1) A detailed description of the services to be provided;

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 2) Provisions for adherence to all applicable agency policies and personnel requirements, including requirements for initial health evaluations and employee health policies, and criminal background checks if applicable;
  - 3) Designation of full responsibility for agency control over contracted services;
  - 4) Procedures for submitting clinical and progress notes;
  - 5) Charges for contracted services;
  - 6) A statement of responsibility of liability and insurance coverage (employment, workers' compensation) and taxes, including employment and Social Security taxes;
  - 7) The period of time the written agreement is in effect;
  - 8) Date and signatures of appropriate authorities; and
  - 9) Provisions for termination of services.
- c) When services are provided to clients by a home services agency, there shall be a written contractual agreement between the client and the agency that includes, but is not limited to:
- 1) Indication and assurance of compliance by the agency with the requirements of the Act, including the Health Care Worker Background Check Act;
  - 2) Identification of parties responsible for payment of employment taxes, Social Security taxes, and workers' compensation;
  - 3) Information on the parties responsible for supervising workers, as well as hiring, firing and discipline of in-home services workers;
  - 4) Identification of the charges to be paid, payment schedule, and to whom the client, or person acting on behalf of the client, is to make payments for services under the contract;

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 5) Time period for the contractual arrangement and conditions for termination of the contract; and
  - 6) Contact information for the client to use in case of concerns, complaints, or questions on care to be provided.
- d) Acceptance of Clients. Home Services Agencies shall develop and follow policies on acceptance and discharge of clients, which shall include, but not be limited to, the following:
- 1) Persons shall be accepted for service on the basis of their desire or need for assistance with household or personal support or companionship services. A home services agency shall not provide medical services that would be performed by an agency licensed as a home health agency or home nursing agency.
  - 2) The agency may accept a client who requires complete repositioning and where the client is able to assist either verbally, non-verbally (including non-verbal indications and cues), or through others (i.e. bed-ridden client who requires complete assistance to reposition in bed every two hours with no ability to provide any verbal or non-verbal indications and cues that repositioning may be needed) only when the following conditions are met:
    - A) The home services worker shall have been trained in the indications of and the procedures for positioning and repositioning a client in the above situation;
    - B) The client's representative shall be able to assist with the positioning or repositioning, either directly or by providing ongoing feedback, including indications of potential harm or discomfort, to the home services worker through either verbal or non-verbal indications and cues if the client representative is present when the position needs to be changed; and
    - C) The agency shall have conducted a competency evaluation of the worker that confirms competency with the indications of and the

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

[procedures for positioning and repositioning a client in the above situation.](#)

- ~~32~~) No person shall be refused services based on age, race, color, sex, marital status or national origin.
- ~~43~~) When services are terminated by the agency, the client is to be notified at least seven working days in advance of the date of termination, with a stated reason for the termination. This information shall be maintained in the client record. The seven-day notice requirement is not applicable in cases in which the worker's safety is at risk. In these cases, the agency may notify the client of termination of services and the reason for termination. Documentation of the risk to the provider shall be maintained in the client record.
- ~~54~~) The acceptance of the client for non-medical services shall be based on the following documented information, in consultation with the client and his or her appropriate family members or representative:

  - A) Any functional limitations of the client and the relevance of the limitation to the services requested; and
  - B) Any circumstances that may have an impact on activity or involvement by the client, such as basic information on medications being taken, treatments received, client's physical activity, diet and mental status in relation to the services requested.
- e) Service Plan. The agency shall establish a plan for each client, in consultation with the client and his or her appropriate family members or representative, that outlines the services to be provided to the client. The plan shall address and include, but not be limited to:

  - 1) The level, type, frequency and scope of services the client is receiving;
  - 2) Identification of any functional limitations of the client and the relevance of the limitation to the services to be provided;
  - 3) Information received from the client and his or her appropriate family members or representative, which shall be communicated to the home



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

services worker, on circumstances that may have an impact on the client's activity or involvement, such as basic information on medications being taken, treatments received, client's physician, activity, diet and mental status.

4) The plan will only include services within the scope of work for a home services worker as provided in Section 245.40(c)(4)(A) through (P).

- f) Physician signature is not required for the plan of service developed under this Section.
- g) The service plan shall be reviewed and revised as necessary, but not less than once annually.
- h) Client Records. A client record shall be maintained for each client receiving in-home services. The record shall contain:
  - 1) Appropriate identifying information for the client, including the client's name, address and telephone numbers;
  - 2) The name, telephone numbers and address of the client's representative, if applicable;
  - 3) The name, telephone numbers and address of an individual or relative to be contacted in an emergency;
  - 4) The plan of services agreed to by the client and agency;
  - 5) A copy of the Client Home Care Services Agreement or Contract; and
  - 6) Documentation by the home services worker of each of the services provided at each visit.
- i) Each agency shall have a written policy on records procedures and shall retain records for a minimum of two years beyond the last date of service provided. The agency may utilize hard copies or an electronic format. Each agency shall have written policies and procedures for records maintenance and shall retain records for a minimum of two years beyond the last date of service provided. The procedures may include that the agency will use and maintain faxed copies of

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

records, rather than original records, provided that faxed copies shall be maintained on non-thermal paper and that the original records will be maintained for a period of two years by the originating entity.

- j) Each agency shall have a written policy for protecting the confidentiality of patient records that explains the use of records, removal of records, and release of information.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Sexual Assault Survivors Emergency Treatment Code
- 2) Code Citation: 77 Ill. Adm. Code 545
- 3) 

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
545.20	Amendment
545.25	Amendment
545.50	Amendment
545.60	Amendment
545.61	Amendment
545.64	Amendment
545.65	Amendment
- 4) Statutory Authority: Sexual Assault Survivors Emergency Treatment Act [410 ILCS 70]
- 5) A Complete Description of the Subjects and Issues Involved: These proposed amendments add language to 77 Ill. Adm. Code 545 clarifying that a sexual assault survivor may present for a medical forensic examination after seven days following the assault and that evidence collection may be conducted after seven days following the assault. Other new language clarifies when law enforcement may be present for medical forensic examinations for survivors who are in the custody of law enforcement. This proposed rulemaking also implements changes to the Sexual Assault Survivors Emergency Treatment Act from Public Act 102-0022 and makes other technical changes.

The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? Yes
- 10) Are there any other proposed rulemakings pending on this Part? No

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 11) Statement of Statewide Policy Objectives: This rulemaking does not create a State mandate.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning this rulemaking within 45 days after this issue of the *Illinois Register* to:
- Department of Public Health  
Attention: Tracey Trigillo, Rules Coordinator  
Lincoln Plaza  
524 South 2nd Street, 6th Floor  
Springfield, IL 62701
- (217)782-1159  
dph.rules@illinois.gov
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Hospitals.
- B) Reporting, bookkeeping or other procedures required for compliance: Evidence collection
- C) Types of professional skills necessary for compliance: Physician, registered nurse, sexual assault forensic and nurse examiners
- 14) Small Business Impact Analysis:
- A) Types of businesses subject to the proposed rule:
- 62 Health Care and Social Assistance
- B) Categories that the agency reasonably believes the rulemaking will impact, including:
- i. hiring and additional staffing
- ii. regulatory requirements
- viii. record keeping

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- 15) Regulatory Agenda on which this rulemaking was summarized: July 2021

The full text of the Proposed Amendments begins on the next page:

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

## TITLE 77: PUBLIC HEALTH

## CHAPTER I: DEPARTMENT OF PUBLIC HEALTH

## SUBCHAPTER f: EMERGENCY SERVICES AND HIGHWAY SAFETY

## PART 545

SEXUAL ASSAULT SURVIVORS  
EMERGENCY TREATMENT CODE

## Section

- 545.10 Applicability
- 545.20 Definitions
- 545.25 Incorporated and Referenced Materials
- 545.30 Application of Rules (Repealed)
- 545.35 Development and Approval of Plans
- 545.40 Qualified Medical Provider and Emergency Department Clinical Staff
- 545.50 Areawide Sexual Assault Treatment Plans
- 545.55 Treatment and Transfer of Pediatric Sexual Assault Survivors
- 545.60 Treatment of Sexual Assault Survivors
- 545.61 Submitting Sexual Assault Evidence to Law Enforcement
- 545.62 Pediatric Health Care Facilities
- 545.63 Treatment Hospitals with Pediatric Transfer
- 545.64 Out-of-State Hospitals
- 545.65 Transfer of Sexual Assault Survivors
- 545.66 Photo Documentation
- 545.67 Compliance Review
- 545.70 Approval of a Sexual Assault Transfer Plan
- 545.75 Approval of a Sexual Assault Treatment Hospital with a Pediatric Transfer Plan
- 545.80 Approval of a Sexual Assault Treatment Plan
- 545.85 Approval of a Pediatric Health Care Facility Sexual Assault Treatment Plan
- 545.90 Approval of an Out-of-State Hospital Sexual Assault Treatment Plan
- 545.95 Emergency Contraception
- 545.100 Sexual Assault Services Vouchers and Written Notice to Sexual Assault Survivors
- 545.105 Treatment Data Required by the Department
  
- 545.APPENDIX A Sexual Assault Treatment Plan Form (Repealed)
- 545.APPENDIX B Sexual Assault Transfer Plan Form (Repealed)
- 545.APPENDIX C Emergency Contraception Protocols

AUTHORITY: Implementing and authorized by the Sexual Assault Survivors Emergency

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

Treatment Act [410 ILCS 70].

SOURCE: Filed December 30, 1977; rules repealed and new rules adopted at 5 Ill. Reg. 1139, effective January 23, 1981; codified at 8 Ill. Reg. 16334; amended at 11 Ill. Reg. 1589, effective February 1, 1987; amended at 12 Ill. Reg. 20790, effective December 1, 1988; emergency amendment at 26 Ill. Reg. 5151, effective April 1, 2002, for a maximum of 150 days; emergency expired August 28, 2002; amended at 27 Ill. Reg. 1567, effective January 15, 2003; amended at 33 Ill. Reg. 14588, effective October 9, 2009; amended at 34 Ill. Reg. 12214, effective August 4, 2010; amended at 41 Ill. Reg. 14980, effective November 27, 2017; amended at 42 Ill. Reg. 16036, effective August 2, 2018; emergency amendment at 43 Ill. Reg. 1089, effective January 1, 2019, for a maximum of 150 days; amended at 43 Ill. Reg. 4992, effective April 17, 2019; amended at 44 Ill. Reg. 6326, effective April 10, 2020; emergency amendment at 45 Ill. Reg. 5671, effective April 16, 2021 through June 30, 2021; emergency amendment at 45 Ill. Reg. 9188, effective July 1, 2021, for a maximum of 150 days; emergency expired November 27, 2021; amended at 45 Ill. Reg. 12852, effective September 24, 2021; emergency amendment at 45 Ill. Reg. 15387, effective November 28, 2021, through December 31, 2021; amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 545.20 Definitions**

Act – the Sexual Assault Survivors Emergency Treatment Act.

*Advanced practice registered nurse or APRN* – has the meaning ascribed in Section 50-10 of the Nurse Practice Act. (Section 1a of the Act)

Alcohol-facilitated sexual assault – the use of any alcoholic beverage in the commission of a sexual assault.

*Ambulance provider* – an individual or entity that owns and operates a business or service using ambulances or emergency medical services vehicles to transport emergency patients. (Section 1a of the Act)

*Approved pediatric health care facility* – a health care facility, other than a hospital, with a sexual assault treatment plan approved by the Department to provide medical forensic services to pediatric sexual assault survivors who present with a complaint of sexual assault within seven days after the assault, ~~or~~ who have disclosed past sexual assault by a specific individual and were in the care of that individual within the last seven days, or who have a clinical indication for medical forensic services beyond seven days. (Section 1a of the Act)

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

*Areawide sexual assault treatment plan or areawide plan – a plan, developed by hospitals or by hospitals and approved pediatric health care facilities in a community or area to be served, which provides for medical forensic services to sexual assault survivors that shall be made available by each of the participating hospitals and approved pediatric health care facilities. (Section 1a of the Act)*

*Board-certified child abuse pediatrician – a physician certified by the American Board of Pediatrics in child abuse pediatrics. (Section 1a of the Act)*

*Board-eligible child abuse pediatrician – a physician who has completed the requirements set forth by the American Board of Pediatrics to take the examination for certification in child abuse pediatrics. (Section 1a of the Act)*

Caregiver – any person who is legally responsible for providing care to the patient or who renders support to the patient.

*Department – the Department of Public Health. (Section 1a of the Act)*

Drug-facilitated sexual assault – the use of a chemical submissive agent in the commission of a sexual assault, given without consent of the victim, that produces relaxant effects, blackouts, coma, impaired judgment, or loss of coordination.

*Emergency contraception – medication as approved by the federal Food and Drug Administration (FDA) that can significantly reduce the risk of pregnancy if taken within 72 hours after sexual assault. (Section 1a of the Act)*

*Follow-up health care – health care services related to a sexual assault, including laboratory services and pharmacy services, rendered within 90 days after the initial visit for medical forensic services. (Section 1a of the Act)*

*Health care professional – a physician, a physician assistant, a sexual assault forensic examiner, an APRN, a registered professional nurse, a licensed practical nurse, or a sexual assault nurse examiner. (Section 1a of the Act)*

*Hospital – a hospital licensed under the Hospital Licensing Act or operated under the University of Illinois Hospital Act, any outpatient center or freestanding emergency center licensed under 77 Ill. Adm. Code 518 included in the hospital's sexual assault treatment plan where hospital employees provide medical forensic*



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

*services, and an out-of-state hospital that has consented to the jurisdiction of the Department under Section 2.06 of the Act. (Section 1a of the Act)*

*Law enforcement agency having jurisdiction – the law enforcement agency in the jurisdiction where an alleged sexual assault or sexual abuse occurred. (Section 1a of the Act)*

*Licensed practical nurse – has the meaning ascribed in Section 50-10 of the Nurse Practice Act. (Section 1a of the Act)*

*Medical forensic services – health care delivered to patients within or under the care and supervision of personnel working in a designated emergency department of a hospital or an approved pediatric health care facility. "Medical forensic services" includes, but is not limited to, taking a medical history, performing photo documentation, performing a physical and anogenital examination, assessing the patient for evidence collection, collecting evidence in accordance with a statewide sexual assault evidence collection program administered by the Illinois State Police using the Sexual Assault Evidence Collection Kit, if appropriate, assessing the patient for drug-facilitated or alcohol-facilitated sexual assault, providing an evaluation of and care for sexually transmitted infection and human immunodeficiency virus (HIV), pregnancy risk evaluation and care, and discharge and follow-up healthcare planning. (Section 1a of the Act)*

*Pediatric health care facility – a clinic or physician's office that provides medical services to pediatric patients. (Section 1a of the Act)*

*Pediatric sexual assault survivor – a person under the age of 13 who presents for medical forensic services in relation to injuries or trauma resulting from a sexual assault. (Section 1a of the Act)*

*Photo documentation – digital photographs or colposcope videos stored and backed-up securely in the original file format. (Section 1a of the Act)*

*Physician – a person licensed to practice medicine in all its branches as defined in the Medical Practice Act of 1987. (Section 1a of the Act)*

*Physician assistant – has the meaning ascribed in Section 4 of the Physician Assistant Practice Act of 1987. (Section 1a of the Act)*

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

*Prepubescent sexual assault survivor – a female who is under the age of 18 years and has not had a first menstrual cycle or a male who is under the age of 18 years and has not started to develop secondary sex characteristics who presents for medical forensic services in relation to injuries or trauma resulting from a sexual assault. (Section 1a of the Act)*

*Qualified medical provider – a board-certified child abuse pediatrician, board-eligible child abuse pediatrician, sexual assault forensic examiner, or sexual assault nurse examiner who has access to photo documentation tools, and who participates in peer review. (Section 1a of the Act)*

*Registered Professional Nurse – has the meaning ascribed in Section 50-10 of the Nurse Practice Act. (Section 1a of the Act)*

*Sexual assault:*

*An act of sexual conduct; as used in this Part, "sexual conduct" has the meaning ascribed under Section 11-0.1 of the Criminal Code of 2012; or*

*Any act of sexual penetration; as used in this Part, "sexual penetration" has the meaning ascribed under Section 11-0.1 of the Criminal Code of 2012 and includes, without limitation, acts prohibited under Sections 11-1.20 through 11-1.60 of the Criminal Code of 2012. (Section 1a of the Act)*

*Sexual Assault Evidence Collection Kit – the Illinois State Police Sexual Assault Evidence Collection Kit; a prepackaged set of materials and forms to be used for the collection of evidence relating to sexual assault. The standardized evidence collection kit for the State of Illinois shall be the Sexual Assault Evidence Collection Kit. (Section 1a of the Act)*

*Sexual assault forensic examiner – a physician or physician assistant who has completed training that meets or is substantially similar to the Sexual Assault Nurse Examiner Education Guidelines established by the International Association of Forensic Nurses. (Section 1a of the Act)*

*Sexual assault nurse examiner – an APRN or registered professional nurse who has completed a sexual assault nurse examiner (SANE) training program that*

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

*meets the Forensic Sexual Assault Nurse Examiner Education Guidelines established by the International Association of Forensic Nurses. (Section 1a of the Act)*

*Sexual assault services voucher – a document generated by a hospital or approved pediatric health care facility at the time the sexual assault survivor receives outpatient medical forensic services that may be used to seek payment for any ambulance services, medical forensic services, laboratory services, pharmacy services, and follow-up healthcare provided as a result of the sexual assault. (Section 1a of the Act)*

*Sexual assault survivor or survivor – a person who presents for medical forensic ~~hospital emergency~~ services in relation to injuries or trauma resulting from a sexual assault. (Section 1a of the Act)*

*Sexual assault transfer plan – a written plan developed by a hospital and approved by the Department, which describes the hospital's procedures for transferring sexual assault survivors to another hospital, and an approved pediatric health care facility, if applicable, in order to receive ~~forensic~~-medical forensic services. (Section 1a of the Act)*

*Sexual assault treatment plan – a written plan that describes the procedures and protocols for providing medical forensic services to sexual assault survivors who present themselves for such services, either directly or through transfer from a hospital or approved pediatric health care facility. (Section 1a of the Act)*

*Transfer hospital – a hospital with a sexual assault transfer plan approved by the Department. (Section 1a of the Act)*

*Transfer services – the appropriate medical screening examination and necessary stabilizing treatment prior to the transfer of a sexual assault survivor to a hospital or an approved pediatric health care facility that provides medical forensic services to sexual assault survivors pursuant to a sexual assault treatment plan or areawide sexual assault treatment plan. (Section 1a of the Act)*

*Treatment hospital – a hospital with a sexual assault treatment plan approved by the Department to provide medical forensic services to all sexual assault survivors who present with a complaint of sexual assault within seven days after the assault, ~~and~~ who have disclosed past sexual assault by a specific individual and*

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

*were in the care of that individual within the last seven days, or who have a clinical indication for medical forensic services beyond seven days.* (Section 1a of the Act)

*Treatment hospital with approved pediatric transfer – a hospital with a treatment plan approved by the Department to provide medical forensic services to sexual assault survivors 13 years old or older who present with a complaint of sexual assault within seven days after the assault, ~~or~~ who have disclosed past sexual assault by a specific individual and were in the care of that individual within the last seven days, or who have a clinical indication for medical forensic services beyond seven days.* (Section 1a of the Act)

Unauthorized personnel – all individuals whose presence in the examination room is not desired or required either by the hospital or by the survivor (e.g., representatives of the media).

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 545.25 Incorporated and Referenced Materials**

- a) The following materials are referenced in this Part:
  - 1) State of Illinois Statutes:
    - A) Sexual Assault Survivors Emergency Treatment Act [410 ILCS 70].
    - B) Hospital Licensing Act [210 ILCS 85].
    - C) University of Illinois Hospital Act [110 ILCS 330].
    - D) Criminal Code of 2012 [720 ILCS 5].
    - E) Crime Victims Compensation Act [740 ILCS 45].
    - F) Criminal Identification Act [20 ILCS 2630].
    - G) Code of Criminal Procedure of 1963 [725 ILCS 5].

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- H) Illinois Public Aid Code [305 ILCS 5].
  - I) Illinois Insurance Code [215 ILCS 5].
  - J) Medical Practice Act of 1987 [225 ILCS 60].
  - K) Emergency Medical Treatment Act [210 ILCS 70].
  - L) Nurse Practice Act [225 ILCS 65].
  - M) Consent by Minors to Medical Procedures Act [410 ILCS 210].
  - N) AIDS Confidentiality Act [410 ILCS 305].
  - O) Physician Assistant Practice Act of 1987 [225 ILCS 95].
  - P) Abused and Neglected Child Report Act [325 ILCS 5].
  - Q) Abused and Neglected Long Term Care Facility Residence Reporting Act [210 ILCS 30].
  - R) Adult Protective Services Act [320 ILCS 20].
  - S) Health Care Surrogate Act [755 ILCS 40].
  - T) Emergency Medical Services (EMS) Systems Act [210 ILCS 50].
  - U) Juvenile Court Act of 1987 [705 ILCS 405].
  - V) Sexual Assault Evidence Submission Act [725 ILCS 202].
- 2) State of Illinois Rules
- A) Department of Public Health, Practice and Procedure in Administrative Hearings (77 Ill. Adm. Code 100).
  - B) Department of Public Health, Hospital Licensing Requirements (77 Ill. Adm. Code 250).

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- C) Department of Public Health, Freestanding Emergency Center Code (77 Ill. Adm. Code 518).
  - D) Department of Healthcare and Family Services, Hospital Services (89 Ill. Adm. Code 148).
  - 3) Federal Statute  
Emergency Medical Treatment and Active Labor Act (EMTALA) (42 USC 1395dd).
  - 4) "Crime Victim Compensation – Frequently Asked Questions by Sexual Assault Victims", which may be obtained from the Office of the Attorney General, 500 S. Second Street, Springfield, Illinois 62706.
  - 5) "After Sexual Assault," published by the Illinois Coalition Against Sexual Assault, available at <https://icasa.org/uploads/documents/Publications/ASA-2020.pdf>.
- b) The following materials are incorporated in this Part:
- 1) Federal Guidelines
    - A) Sexually Transmitted ~~Infections~~~~Diseases~~ Treatment Guidelines, ~~2021~~~~2015~~, Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report (MMWR), ~~July 23, 2021, Vol. 70, No. 4~~~~June 5, 2015, Vol. 64 (RR-3); errata published August 28, 2015~~; available at <https://www.cdc.gov/std/treatment-guidelines/STI-Guidelines-2021.pdf> Fluoroquinolones No Longer Recommended for Treatment of Gonococcal Infections, April 13, 2007, Vol. 56, No. 14. Available from the Centers for Disease Control and Prevention, 1600 Clifton Rd., ~~N.E.~~, Atlanta, Georgia 30329-4027.
    - B) Centers for Disease Control and Prevention, "Sexually Transmitted Disease Surveillance, ~~2019~~, available at <https://www.cdc.gov/std/statistics/2019/default.htm>~~2016~~," ~~Atlanta: U.S. Department of Health and Human Services, 2017, available from the Centers for Disease Control and Prevention, 1600 Clifton~~

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

~~Rd., Atlanta, Georgia 30329-4027, or from  
https://www.cdc.gov/std/stats16/CDC\_2016\_  
STDS\_Report\_for508WebSep21\_2017\_1644.pdf.~~

- C) Centers for Disease Control and Prevention, "Updated Guidelines for Antiretroviral Postexposure ~~Prophylaxis~~<sup>Prophylaxis</sup> After Sexual, Injection Drug Use, or Other Nonoccupational Exposure to HIV – United States, 2016," available from the Centers for Disease Control and Prevention, 1600 Clifton Rd., Atlanta, Georgia 30329-4027, or from <https://www.cdc.gov/hiv/pdf/programresources/cdc-hiv-npep-guidelines.pdf>.

2) Association Standards

- A) Management of the Patient with the Complaint of Sexual Assault, ~~February, 2020~~<sup>April 2014</sup>. Available at <https://www.acep.org/patient-care/policy-statements/management-of-the-patient-with-the-complaint-of-sexual-assault/or> from the American College of Emergency Physicians, Post Office Box 619911, Dallas, Texas 75261-9911.
- B) Sexual Assault Nurse Examiner Education Guidelines, Adult and Pediatric (2018), which may be obtained from the International Association of Forensic Nurses at <https://www.forensicnurses.org/page/EducationGuidelinesAccess>.

- c) All incorporations by reference of federal guidelines and association standards refer to the guidelines and standards in effect on the date specified and do not include any later editions or amendments.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 545.50 Areawide Sexual Assault Treatment Plans**

- a) *Hospitals and approved pediatric health care facilities in the area to be served may develop and participate in areawide plans that shall describe the medical forensic services to sexual assault survivors that each participating hospital and approved pediatric health care facility has agreed to make available. Each hospital and approved pediatric health care facility participating in such a plan*

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

*shall provide services as it is designated to provide in the plan agreed upon by the participants. An areawide plan may include treatment hospitals, treatment hospitals with approved pediatric transfer, transfer hospitals, approved pediatric health care facilities, or out-of-state hospitals as provided in Section 5.4 of the Act. (Section 3 of the Act)*

- b) *All areawide plans shall be submitted to the Department for approval prior to becoming effective. (Section 3 of the Act)*
- c) *The Department will approve a proposed plan if it finds that the minimum requirements set forth in Section 5 of the Act and Section 545.60 of this Part are met and implementation of the plan would provide for appropriate medical forensic services, pursuant to this Part, for the people of the area to be served. (Section 3 of the Act)*
- d) Each plan shall include a description of the role of each hospital or pediatric health care facility participating in the plan, as well as the individual treatment or transfer plans for each hospital or pediatric health care facility, in accordance with Section 545.60, 545.62, 545.63, 545.64 or 545.65.
- e) Areawide plans shall conform to the federal Emergency Medical Treatment and Active Labor Act.
- f) Areawide plans shall incorporate all of the requirements set forth in Section 545.55 for the treatment and transfer of pediatric sexual assault survivors.
- g) *Until January 1, 2022, the areawide treatment plan may include a written agreement, with a treatment hospital with approved pediatric transfer that is geographically closer than other hospitals providing medical forensic services to sexual assault survivors 13 years of age or older, stating that the treatment hospital with approved pediatric transfer will provide medical services to sexual assault survivors 13 years of age or older who are transferred from the transfer hospital. If the areawide treatment plan includes a written agreement with a treatment hospital with approved pediatric transfer, it must also include a written agreement with a treatment hospital stating that the treatment hospital will provide medical forensic services to sexual assault survivors under 13 years of age who are transferred from the transfer hospital. (Section 2(a) of the Act)*
- h) Each plan shall indicate which facility participating in the areawide treatment plan



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

is responsible, upon the completion of medical forensic services, for transporting the sexual assault survivor back to the original location where the individual initially presented seeking medical forensic services, unless transportation is arranged by the survivor or by the survivor's non-offending parent or legal guardian.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 545.60 Treatment of Sexual Assault Survivors**

- a) *Every hospital and approved pediatric health care facility providing medical forensic services to sexual assault survivors shall comply with the federal Emergency Medical Treatment and Active Labor Act and, as minimum requirements for such services, provide, with the consent of the sexual assault survivor, and as ordered by the attending physician, an APRN who possesses clinical privileges recommended by the hospital or approved pediatric health care facility medical staff and granted by the hospital or approved pediatric health care facility, as authorized by the Nurse Practice Act, or a physician assistant, the services set forth in Section 5(a-5) of the Act and this Section. (Section 5(a) of the Act)*
- b) *Beginning January 1, ~~2023~~2022, a qualified medical provider shall provide the services set forth in Section 5(a-5) of the Act and this Section. (Section 5(a) of the Act)*
- c) *By January 1, ~~2023~~2022, every hospital with a treatment plan approved by the Department shall employ or contract with a qualified medical provider to initiate medical forensic services to a sexual assault survivor within 90 minutes after the patient presenting to the treatment hospital or treatment hospital with approved pediatric transfer. The provision of medical forensic services by a qualified medical provider shall not delay the provision of life-saving medical care. (Section 5(a-7) of the Act)*
- d) *A treatment hospital, a treatment hospital with approved pediatric transfer, or an approved pediatric health care facility shall provide the following services in accordance with Section 5(a) of the Act:*
  - 1) *Appropriate medical forensic services without delay, in a private, age-appropriate or developmentally appropriate space, required to ensure the*

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

*health, safety, and welfare of a sexual assault survivor and that may be used as evidence in a criminal proceeding against a person accused of the sexual assault, in a proceeding under the Juvenile Court Act of 1987, or in an investigation under the Abused and Neglected Child Reporting Act.* (Section 5(a-5) of the Act) Medical forensic services shall include, but are not limited to:

- A) A general physical examination;
  - B) Evaluation and treatment for sexually transmitted infections in accordance with the guidelines of the Centers for Disease Control and Prevention titled Sexually Transmitted Diseases Treatment Guidelines, or the standards of the American College of Emergency Physicians titled Management of the Patient with the Complaint of Sexual Assault (see Section 545.25);
  - C) Evaluation and possible treatment for HIV exposure in accordance with the guidelines of the Centers for Disease Control and Prevention titled Sexually Transmitted Diseases Treatment Guidelines, or the recommendations titled Antiretroviral Postexposure Prophylaxis After Sexual, Injection Drug Use, or Other Nonoccupational Exposure to HIV in the United States, or the standards of the American College of Emergency Physicians titled Management of the Patient with the Complaint of Sexual Assault. Testing for HIV shall be conducted in accordance with the AIDS Confidentiality Act; and
  - D) Pregnancy test for females of childbearing age;
- 2) *An offer to complete the Sexual Assault Evidence Collection Kit for any sexual assault survivor who presents within seven days after the assault, ~~or~~ who has disclosed past sexual assault by a specific individual and was in the care of that individual within the last seven days, or who has a clinical indication for medical forensic services beyond seven days.* Nothing in the Act or this Part prevents a treatment hospital, a treatment hospital with approved pediatric transfer, or an approved pediatric health care facility from offering to complete the Sexual Assault Evidence Collection Kit for any sexual assault survivor who presents more than seven days after the assault;

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- A) *Appropriate oral and written information concerning evidence-based guidelines for the appropriateness of evidence collection, depending on the sexual development of the sexual assault survivor, the type of sexual assault, and the timing of the sexual assault, shall be provided to the sexual assault survivor. A qualified medical provider shall educate and ~~encourage~~offer prepubescent sexual assault survivors who present to a hospital or approved pediatric health care facility with a complaint of sexual assault within 96 hours after the sexual assault to agree to evidence collection (however, the seven-day period in subsection (d)(2) still applies);*
- B) *Before January 1, ~~2023~~2022, the information required under this subsection (d) shall be provided in person by the health care professional providing medical forensic services directly to the sexual assault survivor;*
- C) *On and after January 1, ~~2023~~2022, the information required under this subsection (d) shall be provided in person by the qualified medical provider providing medical forensic services directly to the sexual assault survivor;*
- D) *The written information provided shall be the information created in accordance with Section 10 of the Act;*
- E) *Following the discussion regarding the evidence-based guidelines for evidence collection in accordance with subsection (d)(2)(A), evidence collection shall be completed at the sexual assault survivor's request. A sexual assault nurse examiner conducting an examination using the Sexual Assault Evidence Collection Kit may do so without the presence or participation of a physician.  
(Section 5(a-5) of the Act)*
- 3) *Appropriate oral and written information concerning the possibility of infection, sexually transmitted infection, including an evaluation of the sexual assault survivor's risk of contracting human immunodeficiency virus (HIV) from sexual assault, and pregnancy resulting from sexual assault (Section 5(a-5) of the Act);*

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 4) *Medically and factually accurate written and oral information about emergency contraception; the indications and contraindications and risks associated with the use of emergency contraception; and a description of how and when sexual assault survivors may be provided emergency contraception at no cost upon the written order of a physician, a licensed APRN, or a licensed physician assistant (Section 2.2(b) of the Act);*
- 5) *Appropriate oral and written information concerning accepted medical procedures, laboratory tests, medication, and possible contraindications of that medication available for the prevention or treatment of infection or disease resulting from sexual assault (Section 5(a-5) of the Act);*
- 6) *After a medical forensic or physical examination, access to a shower at no cost, unless showering facilities are unavailable (Section 5(a) of the Act);*
- 7) *An amount of medication, including HIV prophylaxis, for treatment at the hospital or approved pediatric health care facility and after discharge as is deemed appropriate by the attending physician, an APRN, or a physician assistant in accordance with the Centers for Disease Control and Prevention guidelines in Section 545.25(b)(1) and (2), and consistent with the hospital's or approved pediatric health care facility's current approved protocol for sexual assault survivors. (Section 5(a-5) of the Act) When HIV prophylaxis is deemed appropriate, an initial dose or doses of HIV prophylaxis, along with written and oral instructions indicating the importance of timely follow-up health care, shall be given to the survivor;*
- 8) *~~Photo~~Beginning July 1, 2019, photo documentation of the sexual assault survivor's injuries, anatomy involved in the assault, or other visible evidence on the sexual assault survivor's body to supplement the medical forensic history and written documentation of physical findings and evidence. Photo documentation does not replace written documentation of the injury. (Section 5(a-5) of the Act);*
- 9) *Written and oral instructions indicating the need for follow-up examinations and laboratory tests one to two weeks after the sexual assault to determine the presence or absence of sexually transmitted infection (Section 5(a-5) of the Act);*

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 10) Appropriate referral to a physician. The survivor shall be referred for follow-up health care and monitoring of medication given or prescribed at the time of the initial hospital or approved pediatric health care facility medical forensic services visit as may be deemed appropriate by the attending physician, APRN, or physician assistant;
  - 11) *Referral by hospital or approved pediatric health care facility personnel for appropriate counseling.* (Section 5(a-5) of the Act) Initial referral should be to a community-based rape crisis center, if a center is available, or referral to other counseling shall be provided;
  - 12) *Medical advocacy services provided by a rape crisis counselor whose communications are protected under Section 8-802.1 of the Code of Civil Procedure, if there is a memorandum of understanding between the hospital or approved pediatric health care facility and a rape crisis center. With the consent of the sexual assault survivor, a rape crisis counselor shall remain in the exam room during the medical forensic examination* (Section 5(a-5) of the Act);
  - 13) *Written information regarding services provided by a children's advocacy center and rape crisis center, if applicable* (Section 5(a-5) of the Act);
  - 14) The brochure "After Sexual Assault", published by the Illinois Coalition Against Sexual Assault and the Illinois Department of Public Health, and the pamphlet "Crime Victim Compensation – Frequently Asked Questions by Sexual Assault Victims", published by the Illinois Office of the Attorney General;
  - 15) Information on drug- or alcohol-facilitated sexual assault testing, including an explanation of the comprehensive scope of a drug test or blood alcohol test, and the limited time frame within which evidence can be collected; and
  - 16) *Written information regarding the Illinois State Police sexual assault evidence tracking system, as provided in Section 545.61. (Section 5(a-5) of the Act)*~~Information regarding evidence collection, and the process and use of evidence in criminal investigation/cases.~~
- e) *Records of medical forensic services, including results of examinations and tests,*

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

*the Illinois State Police Medical Forensic Documentation Forms, the Illinois State Police Patient Discharge Materials, and the Illinois State Police Patient Consent: Collect and Test Evidence or Collect and Hold Evidence Form, shall be maintained by the hospital or approved pediatric health care facility as part of the patient's electronic medical record.*

- 1) *Records of medical forensic services for sexual assault survivors under the age of 18 shall be retained by the hospital for a period of 60 years after the sexual assault survivor reaches the age of 18. Records of medical forensic services of sexual assault survivors 18 years of age or older shall be retained by the hospital for a period of 20 years after the date the record was created.*
- 2) *Records of medical forensic services may only be disseminated in accordance with Section 6.5 of the Act, Section 545.61 of this Part, and other State and federal law. (Section 5(a-5) of the Act)*
- f) *Any person who is a sexual assault survivor who seeks medical forensic services or follow-up healthcare under the Act shall be provided those services without the consent of any parent, guardian, custodian, surrogate, or agent. If a sexual assault survivor is unable to consent to medical forensic services, the services may be provided under the Consent by Minors to Medical Procedures Act, the Health Care Surrogate Act, or other applicable State and federal laws. (Section 5(b) of the Act)*
- g) *The hospital or approved pediatric health care facility shall develop a uniform system for recording results of medical examinations and all diagnostic tests performed in connection with the examination to determine the condition and necessary treatment of sexual assault survivors. The results shall be preserved in a confidential manner as part of the hospital's or approved pediatric health care facility's record of the sexual assault survivor. (Section 6.1 of the Act) The medical record shall include the information required in this subsection (g):*
  - 1) *The medical record shall indicate if the sexual assault survivor changed clothes, bathed or douched, defecated, urinated, ate, smoked, or performed oral hygiene between the time of the sexual assault and the time of the examination.*
  - 2) *The medical record shall indicate presence of all indications of trauma,*

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

major or minor, that may be used in a criminal proceeding (e.g., cuts, scratches, bruises, red marks, any minor signs of trauma). Photographs of indications of trauma may be taken for evidentiary purposes with the written consent of the sexual assault survivor or the survivor's parent or guardian if the survivor is under 13 years of age. If the survivor is under 13 years of age and the parent or guardian is not immediately available, photographs may be taken and shall be released to law enforcement personnel and State's Attorney staff with written consent of a parent, guardian, or law enforcement officer, or the Department of Children and Family Services.

- 3) The medical record shall not reflect any conclusions regarding whether a crime (e.g., criminal sexual assault, criminal sexual abuse) occurred.
- 4) Medical history shall include brief, general information concerning possible injury; drug allergies; and, for female patients, a detailed gynecological history, including whether the patient knows or believes that she is pregnant, history of prior gynecological surgery such as hysterectomy or tubal ligation, history of contraceptive use, history of cancer, and any prior genital injury or trauma.
- 5) The medical record shall indicate the presence of any and all persons during the examination process. If a medical advocate from a rape crisis center is present, the medical advocate may be listed by first name only, so long as the full name of the rape crisis center is listed in the record.
- 6) The medical record shall document the compliance with each procedure required by subsection (i).
- 7) The medical record shall indicate whether a report was filed with the Department of Children and Family Services, or whether the Department on Aging or the Department of Public Health was contacted.
- 8) The medical record shall include a completed emergency department record.
- 9) The medical record shall indicate whether the Sexual Assault Evidence Collection Kit was completed.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- h) All medical records for sexual assault survivors shall be maintained through a filing system that allows for immediate accessibility during Department surveys. This filing system may be maintained electronically.
- i) Procedures to ensure the welfare and privacy of the survivor shall be followed and shall include, but not be limited to, the following:
  - 1) A member of the health care team shall respond within minutes to move the survivor to a closed environment to ensure privacy. Health care personnel shall refer to survivors by code to avoid embarrassment.
  - 2) If, for any reason, the survivor is incapable of receiving oral and written information required in subsection (a), the information shall be given to the caregiver/guardian.
  - 3) When a survivor is in custody, or has been arrested for or convicted of a violent crime or forcible felony and continues to be in custody when the survivor presents for the medical forensic exam, then if the qualified medical provider and the representative of the custodial agency, after consultation with the rape crisis advocate, agree that it is a necessary safety precaution, the representative of the custodial agency may remain in the room. In these situations, hospital staff shall facilitate privacy for the survivor using curtains and positioning~~All unauthorized personnel, including law enforcement personnel and security personnel, shall remain outside the examination room during the medical examination. If a survivor who is in the custody of law enforcement or security officers exhibits behavior that may cause physical harm to herself/himself or hospital or approved pediatric health care facility staff, the staff shall request that law enforcement or security officers be posted outside the examination room door.~~
  - 4) The hospital or approved pediatric health care facility shall call a sexual assault crisis advocate, where available, and shall offer to call a friend or family member to accompany the survivor.
- j) *When a minor is the victim of a predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, aggravated criminal sexual abuse or criminal sexual abuse, as provided in Sections 11-1.20 through 11-1.60 of the Criminal Code of 2012, the consent of the minor's parent or legal*



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

*guardian need not be obtained to authorize a hospital, approved pediatric health care facility, physician, chiropractic physician, optometrist, APRN, physician assistant, or other medical personnel to furnish medical care or counseling related to the diagnosis or treatment of any disease or injury arising from the offense. The minor may consent to counseling, diagnosis or treatment as if the minor had reached his or her age of majority. This consent shall not be voidable, nor subject to later disaffirmance, because of minority. (Section 3(b) of the Consent by Minors to Medical Procedures Act)*

- k) All hospitals or approved pediatric health care facilities that provide emergency medical services to sexual assault survivors shall comply with the Crime Victims Compensation Act, the Consent by Minors to Medical Procedures Act and any local ordinances, municipal codes, rules, or regulations that may apply to the treatment of sexual assault survivors.
- l) All hospitals or approved pediatric health care facilities shall comply with the reporting procedures for sexual assault survivors required by Section 3.2 of the Criminal Identification Act.
- m) *Nothing in this Section creates a physician-patient relationship that extends beyond discharge from the hospital or approved pediatric health care facility. (Section 5(c) of the Act)*
- n) The hospital or approved pediatric health care facility shall take all reasonable steps to secure the patient's ~~written~~ informed written decision to consent to or decline~~refusal of the~~ examination and treatment.
- o) Nothing in the Act or this Part prohibits a treatment hospital, a treatment hospital with approved pediatric transfer, or an approved pediatric health care facility from treating a sexual assault survivor who presents more than seven days following the assault.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 545.61 Submitting Sexual Assault Evidence to Law Enforcement**

- a) The Sexual Assault Evidence Collection Kit shall be used in the manner prescribed by the information contained in that kit.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 1) With the survivor's consent, as prescribed by subsection (c), the kit shall be completed if the survivor presents himself or herself for medical forensic services within *seven days* after the sexual assault, ~~or who has disclosed past sexual assault by a specific individual and was in the care of that individual within the last seven days,~~ or has a clinical indication for medical forensic services beyond seven days. (Section 1a of the Act)
- 2) If the Evidence Collection Kit is not collected by law enforcement upon completion, the hospital or approved pediatric health care facility shall comply with subsection (d).
  - b) *A treatment hospital, a treatment hospital with approved pediatric transfer, an out-of-state hospital as defined in Section 5.4 of the Act and Section 545.64, or an approved pediatric health care facility shall comply with Section 50 of the Sexual Assault Evidence Submission Act and register with the Illinois State Police to utilize the CheckPoint sexual assault evidence tracking system. (Section 5(a-5)(10) of the Act)*
  - c) *Written Consent to the Release of Sexual Assault Evidence for Testing*
    - 1) *Upon the completion of medical forensic services, the health care professional providing the medical forensic services shall provide the patient the opportunity to sign a written consent to allow law enforcement to submit the sexual assault evidence for testing, if collected. The written consent shall be on a form included in the sexual assault evidence collection kit and posted on the Illinois State Police website. The consent form shall include whether the survivor consents to the release of information about the sexual assault to law enforcement.*
      - A) *A survivor 13 years of age or older may sign the written consent to release the evidence for testing.*
      - B) *If the survivor is a minor who is under 13 years of age, the written consent to release the sexual assault evidence for testing may be signed by the parent, guardian, investigating law enforcement officer, or Department of Children and Family Services.*
      - C) *If the survivor is an adult who has a guardian of the person, a health care surrogate, or an agent acting under a health care*

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

*power of attorney, the consent of the guardian, surrogate, or agent is not required to release evidence and information concerning the sexual assault or sexual abuse. If the adult is unable to provide consent for the release of evidence and information and a guardian, surrogate, or agent under a health care power of attorney is unavailable or unwilling to release the information, then an investigating law enforcement officer may authorize the release.*

- D) *Any health care professional or health care institution, including any hospital or approved pediatric health care facility, who provides evidence or information to a law enforcement officer under a written consent, as specified in this subsection (c**b**), is immune from any civil or professional liability that might arise from those actions, with the exception of willful or wanton misconduct. The immunity provision applies only if all of the requirements of the Act and this Section are met.*
- 2) *The hospital or approved pediatric health care facility shall keep a copy of a signed or unsigned written consent form in the patient's medical record pursuant to 77 Ill. Adm. Code 250.1510 (Hospital Licensing Requirements).*
- 3) *If a written consent to allow law enforcement to hold the sexual assault evidence is signed at the completion of medical forensic services, the hospital or approved pediatric health care facility shall include the following information in its discharge instructions:*
- A) *The sexual assault evidence will be stored for 10 years from the completion of a Sexual Assault Evidence Collection Kit, or 10 years from the age of 18 years, whichever is longer;*
- B) *A person authorized to consent to the testing of the sexual assault evidence may sign a written consent to allow law enforcement to test the sexual assault evidence at any time during that 10-year period for an adult victim, or until a minor victim turns 28 years of age by:*
- i) *Contacting the law enforcement agency having jurisdiction,*

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

*or, if unknown, the law enforcement agency contacted by the hospital or approved pediatric health care facility under Section 3.2 of the Criminal Identification Act; or*

ii) *By working with an advocate at a rape crisis center;*

C) *The name, address, and phone number of the law enforcement agency having jurisdiction, or, if unknown, the name, address, and phone number of the law enforcement agency contacted by the hospital under Section 3.2 of the Criminal Identification Act; and*

D) *The name and phone number of a local rape crisis center. (Section 6.5 of the Act)*

d) *Submission of Sexual Assault Evidence*

- 1) *As soon as practicable, but in no event more than four hours after the completion of medical forensic services, the hospital or approved pediatric health care facility shall make reasonable efforts to determine the law enforcement agency having jurisdiction where the sexual assault occurred, if sexual assault evidence was collected. The hospital or approved pediatric health care facility may obtain the name of the law enforcement agency with jurisdiction from the local law enforcement agency.*
- 2) *Within four hours after the completion of medical forensic services, the hospital or approved pediatric health care facility shall notify the law enforcement agency having jurisdiction that the hospital or approved pediatric health care facility is in possession of sexual assault evidence and the date and time the collection of evidence was completed. The hospital or approved pediatric health care facility shall document the notification in the patient's medical records and shall include the agency notified, the date and time of the notification, and the name of the person who received the notification. This notification to the law enforcement agency having jurisdiction satisfies the hospital's or approved pediatric health care facility's requirement to contact its local law enforcement agency under Section 3.2 of the Criminal Identification Act.*
- 3) *If the law enforcement agency having jurisdiction has not taken physical*

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

*custody of sexual assault evidence within five days after the first contact by the hospital or approved pediatric health care facility, the hospital or approved pediatric health care facility shall renotify the law enforcement agency having jurisdiction that the hospital or approved pediatric health care facility is in possession of sexual assault evidence and the date the sexual assault evidence was collected. The hospital or approved pediatric health care facility shall document the renotification in the patient's medical records and shall include the agency notified, the date and time of the notification, and the name of the person who received the notification.*

- 4) *If the law enforcement agency having jurisdiction has not taken physical custody of the sexual assault evidence within 10 days after the first contact by the hospital or approved pediatric health care facility and the hospital or approved pediatric health care facility has provided renotification under subsection (d)(3), the hospital or approved pediatric health care facility shall contact the State's Attorney of the county where the law enforcement agency having jurisdiction is located. The hospital or approved pediatric health care facility shall inform the State's Attorney that the hospital or approved pediatric health care facility is in possession of sexual assault evidence, the date the sexual assault evidence was collected, the law enforcement agency having jurisdiction, and the dates, times and names of persons notified under subsections (d)(2) and (d)(3). The notification shall be made within 14 days after the collection of the sexual assault evidence. (Section 6.6 of the Act)*

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 545.64 Out-of-State Hospitals**

- a) *An out-of-state hospital that submits an areawide treatment plan to the Department in accordance with Section 5.4(b) of the Act and Section 545.90 of this Part consents to the jurisdiction and oversight of the Department, including, but not limited to, inspections, investigations, and evaluations arising out of complaints, relevant to the Act, made to the Department. (Section 2.06 of the Act)*
- b) *An out-of-state hospital that submits an areawide treatment plan to the Department in accordance with Section 5.4(b) of the Act and Section 545.90 of this Part shall be deemed to have given consent to annual inspections, surveys, or*

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

*evaluations relevant to the Act by properly identified personnel of the Department or by such other properly identified persons, including local health department staff, as the Department may designate. (Section 2.06 of the Act)*

- c) *Representatives of the Department shall have access to and may reproduce or photocopy any books, records, and other documents maintained by the out-of-state hospital or the out-of-state hospital's representative to the extent necessary to carry out the Act and this Part. (Section 2.06 of the Act)*
- d) *No representative, agent, or person acting on behalf of the out-of-state hospital in any manner shall intentionally prevent, interfere with, or attempt to impede in any way any duly authorized investigation and enforcement of the Act and this Part. (Section 2.06 of the Act)*
- e) *Each out-of-state treatment hospital shall enter into a memorandum of understanding with an Illinois rape crisis center for medical advocacy services, if these services are available to the out-of-state treatment hospital. With the consent of the sexual assault survivor, a rape crisis counselor shall remain in the exam room during the collection for forensic evidence. (Section 2(c) of the Act)*
- f) *Every out-of-state treatment hospital's sexual assault treatment plan shall include procedures for complying with mandatory reporting requirements pursuant to the:*
  - 1) *Abused and Neglected Child Reporting Act;*
  - 2) *Abused and Neglected Long Term Care Facility Residents Reporting Act;*
  - 3) *Adult Protective Services Act; and*
  - 4) *Criminal Identification Act. (Section 2(d) of the Act)*
- g) *An out-of-state hospital shall comply with Section 545.60.*
- h) *Out-of-state Hospitals Designated as Trauma Centers*
  - 1) *Nothing in the Act or this Part shall prohibit the transfer of a patient in need of medical services to a hospital that has been designated as a trauma center by the Department in accordance with Section 3.90 of the*

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

*Emergency Medical Services (EMS) Systems Act.*

- 2) *A transfer hospital, treatment hospital with approved pediatric transfer, or approved pediatric health care facility may transfer a sexual assault survivor to an out-of-state hospital that has been designated as a trauma center by the Department under Section 3.90 of the Emergency Medical Services (EMS) Systems Act if the out-of-state hospital:*
- A) *Submits an areawide treatment plan approved by the Department; and*
  - B) *Has certified to the Department, in a form and manner prescribed by the Department, that the out-of-state hospital will:*
    - i) *Consent to the jurisdiction of the Department in accordance with Section 2.06 of the Act and this Section;*
    - ii) *Comply with Section 545.60 and all requirements of the Act applicable to treatment hospitals, including, but not limited to, offering evidence collection to any Illinois sexual assault survivor who presents with a complaint of sexual assault within seven days after the assault, ~~or~~ who has disclosed past sexual assault by a specific individual and was in the care of that individual within the last seven days, or who has a clinical indication for medical forensic services beyond seven days, and not billing the sexual assault survivor for medical forensic services or 90 days of follow-up healthcare;*
    - iii) *Use a Sexual Assault Evidence Collection Kit to collect forensic evidence from an Illinois sexual assault survivor;*
    - iv) *Ensure its staff cooperates with Illinois law enforcement agencies and is responsive to subpoenas issued by Illinois courts; and*
    - v) *Provide appropriate transportation, upon the completion of medical forensic services, back to the transfer hospital, treatment hospital with pediatric transfer, or approved*

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

*pediatric health care facility where the sexual assault survivor initially presented seeking medical forensic services, unless the sexual assault survivor chooses to arrange his or her own transportation. (Section 5.4 of the Act)*

- i) *In carrying out oversight of an out-of-state hospital, the Department will respect the confidentiality of all patient records, including by complying with the patient record confidentiality requirements set out in Section 6.14b of the Hospital Licensing Act. (Section 2.06 of the Act)*

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 545.65 Transfer of Sexual Assault Survivors**

- a) All transfers shall comply with the federal Emergency Medical Treatment and Active Labor Act and with Sections 545.50 and 545.55 of this Part.
- b) Sexual assault survivors may be transferred to another hospital or approved pediatric health care facility, in accordance with the requirements of this Section, as part of an areawide plan.
- c) The hospital shall provide an appropriate medical screening examination and necessary stabilizing treatment prior to transfer of the survivor. If a survivor has an emergency medical condition that has not stabilized, the requirements of the federal Emergency Medical Treatment and Active Labor Act shall be met.
- d) When a survivor is in custody, or has been arrested for or convicted of a violent crime or forcible felony and continues to be in custody when the survivor presents for the medical forensic exam, then if the qualified medical provider and the representative of the custodial agency, after consultation with the rape crisis advocate, agree that it is a necessary safety precaution, the representative of the custodial agency may remain in the room. In these situations, hospital staff shall facilitate privacy for the survivor using curtains and positioning~~All unauthorized personnel, including law enforcement personnel, shall remain outside the examination room during the medical examination. If a survivor who is in the custody of law enforcement officers exhibits behavior that may cause physical harm to herself/himself or hospital staff, the staff shall request that law enforcement officers be posted outside the examination room door.~~



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- e) A member of the health care team at the receiving hospital or approved pediatric health care facility shall respond within minutes to ensure privacy, shall refer to survivors by code to avoid embarrassment, and shall offer a private room if a short wait is unavoidable.
- f) The sexual assault survivor shall be given an appropriate explanation concerning the reason for the transfer to another hospital or approved pediatric health care facility for treatment.
- g) The emergency department personnel of the transfer hospital shall notify the receiving hospital or approved pediatric health care facility of the transfer of the sexual assault survivor.
- h) The receiving hospital or approved pediatric health care facility shall:
  - 1) Have the available space and staff for the treatment of the sexual assault survivor; and
  - 2) Agree to accept the transfer of the sexual assault survivor and to initiate medical forensic services *within 90 minutes after the patient's arrival* pursuant to the Act and this Part. (Section 5.3(b) of the Act)
- i) An emergency department record shall be completed and a copy transported with the survivor to the receiving hospital or approved pediatric health care facility. This record shall include:
  - 1) A completed emergency department admission form;
  - 2) Clinical findings, if any;
  - 3) Nurses' notes;
  - 4) The name and relationship to the survivor, if known, of any person present during an examination conducted pursuant to this Section;
  - 5) Observations of signs and symptoms and the presence of any trauma or injury (e.g., cuts, scratches, bruises, red marks, and broken bones), if any examination was conducted or treatment rendered pursuant to subsection

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

(c); and

- 6) The results of any tests.
- j) The emergency department record shall not reflect any conclusions regarding whether a crime (e.g., criminal sexual assault, criminal sexual abuse) occurred.
- k) The hospital shall maintain a chain of custody in the handling of the sexual assault survivor and his or her clothing.
  - 1) The hospital shall handle the survivor and clothing as minimally as possible.
  - 2) The hospital shall not attempt to obtain any specimens for evidentiary purposes (e.g., blood, saliva, hair samples, etc.).
  - 3) If removal of any clothing is necessary to render emergency services as described in subsection (c), removal should be attempted without cutting, tearing or shaking the garments.
  - 4) All loose or removed articles of clothing or other possessions of the survivor shall be left to dry if possible, placed in separate paper bags, and then placed in one larger paper bag. The bag shall be sealed and labeled with the survivor's name, the names of the health care personnel in attendance, the contents, the date, and the time collected.
    - A) Except as otherwise provided in subsection (k)(4)(C), the sealed bag shall not be transported with the survivor to the receiving hospital or approved pediatric health care facility.
    - B) If the survivor is transferred by a friend or family member, the hospital shall notify the law enforcement agency having jurisdiction that a sexual assault survivor sought medical forensic services related to a sexual assault. The hospital shall maintain and secure the sealed bag with the law enforcement report number until, after obtaining the survivor's written consent, the sealed bag is released to the law enforcement agency having jurisdiction (see Section 545.61).

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- C) If the survivor is transported by ambulance, the sealed bag, after obtaining the survivor's written consent, shall be released to the law enforcement agency having jurisdiction or transported with EMS personnel only upon completion of a chain of custody form. The chain of custody form shall be signed by the transfer hospital relinquishing custody of the sealed bag, the EMS personnel with custody of the sealed bag during transport, and the receiving hospital or approved pediatric health care facility taking custody of the sealed bag. Each signature shall include the times and dates the sealed bag was handled.
- l) If the transfer hospital collects a urine sample from the survivor for testing for a drug-facilitated or alcohol-facilitated sexual assault, the hospital shall follow Illinois State Police guidelines for collection. Pursuant to obtaining the survivor's written consent, the urine sample shall be submitted to the local law enforcement agency having jurisdiction (see Section 545.61).
- m) If the sexual assault survivor was brought to the transfer hospital by the police, a friend, or a family member, and has no life-threatening conditions, the survivor may be transported by the police or by the friend or family member to a treatment hospital or approved pediatric health care facility, with the consent of the survivor. All other transfers shall be by ambulance.
- n) A transfer hospital shall transfer a sexual assault survivor to a treatment hospital or approved pediatric health care facility designated in its approved transfer plan.
- o) The hospital shall offer to call a friend, family member or rape crisis advocate to accompany the survivor or call a rape crisis advocate for counseling or follow-up services.
- p) The hospital shall take all reasonable steps to secure the sexual assault survivor's written informed consent to a transfer to another hospital.
- q) The hospital shall comply with the Emergency Medical Treatment Act and the federal Emergency Medical Treatment and Active Labor Act.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Health Care Worker Background Check Code
- 2) Code Citation: 77 Ill. Adm. Code 955
- 3) 

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
955.110	Amendment
955.160	Amendment
955.260	Amendment
955.320	Amendment
955.APPENDIX C	Amendment
- 4) Statutory Authority: Health Care Worker Background Check Act [225 ILCS 46]
- 5) A Complete Description of the Subjects and Issues Involved: These amendments implement Public Act 102-0026, which added the Department of Corrections or third-party vendors who employ certified nursing assistants working with the Department of Corrections to the list of entities in the definition of a "health care employer" for the purposes of the Health Care Background Check Code. These amendments also include cleanup to the language regarding waiver applications in Section 955.260 and removal of a finding of neglect from the Health Care Worker Registry in Section 955.320 consistent with current Department procedures.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? Yes
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not create a State mandate.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning this rulemaking within 45 days after this issue of the *Illinois Register* to:

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

Department of Public Health  
Attention: Tracey Trigillo, Rules Coordinator  
Lincoln Plaza  
524 South 2nd Street, 6th Floor  
Springfield, IL 62701  
  
(217)782-1159  
dph.rules@illinois.gov

13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: Most of the businesses that are affected by the Department of Public Health's rules fall under the definition of a small business. It is the Department's policy to adopt only minimum standards and thus not cause undue hardship on these businesses. The proposed rules were written with small businesses in mind and that the requirements are the bare minimum requirements needed to assure the public health, safety, and welfare of the citizens of the State of Illinois.
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None

14) Small Business Impact Analysis:

- A) Types of businesses subject to the proposed rule:
- 62 Health Care and Social Assistance
- B) Categories that the agency reasonably believes the rulemaking will impact, including:
- i. hiring and additional staffing
  - ii. regulatory requirements
  - vii. training requirements
  - viii. record keeping

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 15) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the two most recent agendas as the need for the rulemaking was not anticipated.

The full text of the Proposed Amendments begins on the next page:

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

## TITLE 77: PUBLIC HEALTH

## CHAPTER I: DEPARTMENT OF PUBLIC HEALTH

## SUBCHAPTER u: MISCELLANEOUS PROGRAMS AND SERVICES

## PART 955

## HEALTH CARE WORKER BACKGROUND CHECK CODE

## Section

955.100	Applicability
955.110	Definitions
955.115	Initiation of Fingerprint-Based Criminal History Records Checks as a Fee Applicant Inquiry
955.120	Incorporated and Referenced Materials
955.130	Exceptions
955.135	Contracted or Subcontracted Workers
955.140	Policies Defining Employee Work Positions
955.145	Employment Verification
955.150	Employment Prohibition
955.160	Disqualifying Offenses
955.165	Fingerprint-Based Criminal History Records Check
955.170	Non-Fingerprint-Based UCIA Criminal History Records Check (Repealed)
955.180	Criminal History Records Checks after Implementation
955.190	Notification to Student, Applicant, or Employee
955.200	Submission of Criminal History Records Check Results to Nurse Aide Registry (Repealed)
955.210	Offer of Permanent Employment
955.220	Health Care Employer Files
955.230	Invalid Non-Fingerprint-Based Records Check (Repealed)
955.240	Fingerprint-Based UCIA Criminal History Records Check (Repealed)
955.250	Additional Conviction (Repealed)
955.260	Application for Waiver
955.270	Department Review of Waiver Application
955.275	Rehabilitation Waiver
955.280	Employment Pending Waiver
955.285	Livescan Vendor Authorization
955.290	Recovery of Back Pay
955.300	Health Care Worker Registry
955.310	Department Findings of Abuse, Neglect, or Misappropriation of Property
955.320	Removal from Registry of a Department Finding of Neglect

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 955.APPENDIX A Offenses that Are Always Disqualifying Except Through the Appeal Process
- 955.APPENDIX B Disqualifying Offenses that May Be Considered for a Rehabilitation Waiver
- 955.APPENDIX C Disqualifying Offenses that May Be Considered for a Waiver by the Submission of a Waiver Application

AUTHORITY: Implementing and authorized by the Health Care Worker Background Check Act [225 ILCS 46].

SOURCE: Adopted at 28 Ill. Reg. 14133, effective October 15, 2004; amended at 33 Ill. Reg. 5378, effective March 26, 2009; amended at 43 Ill. Reg. 3665, effective March 1, 2019; emergency amendment at 44 Ill. Reg. 5951, effective March 25, 2020, for a maximum of 150 days; emergency expired August 21, 2020; emergency amendment at 44 Ill. Reg. 6597, effective April 10, 2020, for a maximum of 150 days; emergency expired September 6, 2020; emergency amendment at 44 Ill. Reg. 14355, effective August 24, 2020, for a maximum of 150 days; emergency expired January 20, 2021; amended at 44 Ill. Reg. 18422, effective October 29, 2020; emergency amendment at 45 Ill. Reg. 1738, effective January 21, 2021, for a maximum of 150 days; emergency expired June 19, 2021; emergency amendment at 45 Ill. Reg. 8109, effective June 20, 2021 through June 26, 2021; emergency expired June 26, 2021; amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 955.110 Definitions**

The following terms have the meaning ascribed to them whenever the term is used in this Part:

"Act" – the Health Care Worker Background Check Act [225 ILCS 46].

*"Applicant" – an individual enrolling in a training program or seeking employment with a health care employer, whether paid or on a volunteer basis, who has received a bona fide conditional offer of employment from a health care employer. (Section 15 of the Act)*

*"Conditional offer of employment" – a bona fide offer of employment by a health care employer to an applicant, which is contingent upon the receipt of a report from the Department of Public Health indicating that the applicant does not have a record of conviction of any of the criminal offenses enumerated in Section 25 of the Act and Section 955.160 of this Part. (Section 15 of the Act)*



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

"Contracted or Subcontracted Worker" – an individual who provides direct care for clients, patients, or residents or who works for a long-term care facility in a position that involves or may involve contact with residents or access to the living quarters or financial, medical, or personal records of long-term care residents under an arrangement other than as an employee.

"Demographic data" – information collected by a livescan vendor concerning an applicant, including, but not limited to, name, address, date of birth, race, height, and eye color.

*"Department" – the Department of Public Health. (Section 15 of the Act)*

"Designee" – a person or committee designated in writing by the Director.

*"Direct care" – the provision of nursing care or assistance with feeding, dressing, movement, bathing, toileting, or other personal needs, including home services as defined in the Home Health, Home Services, and Home Nursing Agency Licensing Act. (Section 15 of the Act)*

*"Director" – the Director of Public Health. (Section 15 of the Act)*

*"Disqualifying offenses" – those offenses set forth in Section 25 of the Act and Section 955.160 of this Part. (Section 15 of the Act)*

"Educational entity" – a community college, community agency, or private business that conducts educational programs in which individuals learn the skills to provide direct care services to clients, residents, or patients.

*"Employee" – any individual hired, employed, or retained, whether paid or on a volunteer basis, to which the Act and this Part apply as set forth in Section 10 of the Act and Section 955.100 of this Part. (Section 15 of the Act)*

"Fee applicant inquiry" – a fingerprint-based criminal history records check requested by an agency of the State of Illinois (in this Part, the Department of Public Health) through the Department of State Police. The Department of State Police stores the fingerprints and provides notification back to the requesting State agency if there is a new conviction associated with the fingerprints.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

*"Finding" – the Department's determination of whether an allegation is verified and substantiated. (Section 15 of the Act)*

*"Fingerprint-based criminal history records check" – a livescan fingerprint-based criminal history records check submitted as a fee applicant inquiry in the form and manner prescribed by the Department of State Police. (Section 15 of the Act)*

*"Health care employer":*

*the owner or licensee of any of the following:*

*a community living facility, as defined in the Community Living Facilities Licensing Act;*

*a life care facility, as defined in the Life Care Facilities Act;*

*a long-term care facility;*

*a home health agency, home services agency, or home nursing agency, as defined in the Home Health, Home Services, and Home Nursing Agency Licensing Act;*

*a hospice care program or volunteer hospice program, as defined in the Hospice Program Licensing Act;*

*a hospital, as defined in the Hospital Licensing Act;*

*a nurse agency, as defined in the Nurse Agency Licensing Act;*

*a respite care provider, as defined in the Respite Program Act;*

*an establishment licensed under the Assisted Living and Shared Housing Act;*

*a supportive living program, as defined in the Illinois Public Aid Code;*

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

*early childhood intervention programs as described in 89 Ill. Adm. Code 500;*

*the University of Illinois Hospital, Chicago;*

*programs funded by the Department on Aging through the Community Care Program;*

*programs certified to participate in the Supportive Living Program authorized by Section 5-5.01a of the Illinois Public Aid Code;*

*programs listed by the Emergency Medical Services (EMS) Systems Act as Freestanding Emergency Centers; or*

*locations licensed under the Alternative Health Care Delivery Act;*

*a day training program certified by the Department of Human Services;*

*a community integrated living arrangement operated by a community mental health and developmental service agency, as defined in the Community-Integrated Living Arrangements Licensing and Certification Act; ~~or~~*

*the State Long Term Care Ombudsman Program, including any regional long term care ombudsman programs under Section 4.04 of the Illinois Act on the Aging, only for the purpose of securing background checks; (Section 15 of the Act); or*

*the Department of Corrections or a third-party vendor employing certified nursing assistants working with the Department of Corrections.*

"Health Care Facility" – a facility owned or operated by a health care employer of the type to which the Act and this Part apply.

"Health Care Worker Registry" – a registry maintained by the Department of Public Health or its designee that includes a registry for certified nursing assistants pursuant to Section 3-206.01 of the Nursing Home Care Act, Section 3-206.01 of the MC/DD Act, and Section 3-206.01 of the ID/DD Community Care

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

Act, and that includes background check and training information for health care employees and students to whom the Act and this Part apply.

*"Initiate" – obtaining from a student, applicant, or employee his or her social security number, demographics, a disclosure statement, and an authorization for a health care employer, an educational entity, or the Department or its designee to request a fingerprint-based criminal history records check; transmitting this information electronically to the Department or its designee; conducting Internet searches on certain web sites from links provided through the Health Care Worker Registry, and having the student's, applicant's, or employee's fingerprints collected directly by a livescan vendor and transmitted electronically to the Department of State Police. (Section 15 of the Act)*

*"Livescan technician" – an individual who is trained to collect fingerprints on livescan equipment and who meets any licensing requirements of the State or federal government.*

*"Livescan vendor" – an entity whose equipment has been certified by the Department of State Police to collect an individual's demographics and inkless fingerprints and, in a manner prescribed by the Department of State Police and the Department of Public Health, electronically transmit the fingerprints and required data to the Department of State Police and a daily file of required data to the Department of Public Health and who has received authorization from the Department under a livescan vendor authorization contract to conduct fingerprinting pursuant to the Act and this Part. (Section 15 of the Act)*

*"Livescan vendor authorization contract" – a standardized contract between the Department and a fingerprinting vendor who has two or more years of experience transmitting fingerprints electronically to the Department of State Police by which the Department provides authorization to the vendor to conduct fingerprinting pursuant to the Act and this Part under the terms and conditions defined in Section 955.285. (Section 15 of the Act)*

*"Long-term care facility" – a facility licensed by the State or certified under federal law as a long-term care facility, including without limitation facilities licensed under the Nursing Home Care Act, the Specialized Mental Health Rehabilitation Act of 2013, the ID/DD Community Care Act, or the MC/DD Act, a supportive living facility, an assisted living establishment, or a shared housing establishment or registered as a board and care home. (Section 15 of the Act)*

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

*"Organization providing pro bono legal services" – an organization that functions to provide legal services performed without compensation or at a significantly reduced cost to the recipient and that provides services designed to help individuals overcome statutory barriers that would prevent them from entering positions in the healthcare industry. (Section 33(n) of the Act)*

"Parole; Mandatory Supervised Release" – except when a term of natural life is imposed, every sentence includes a term in addition to the term of imprisonment. For those sentenced under the law in effect before February 1, 1978, that term is a parole term. For those sentenced on or after February 1, 1978, that term is a mandatory supervised release term.

"Rehabilitation waiver" – a waiver that the Department grants based solely upon the results of a fingerprint-based criminal history records check without a waiver application being submitted to the Department.

*"Resident" – a person, individual, client, consumer, or patient under the direct care of a health care employer or who has been provided goods or services by a health care employer. (Section 15 of the Act)*

"Staffing agency" – any individual or business entity whose profession is job counseling (Section 60 of the Act), or that contracts or subcontracts its workers or services to a health care employer.

"UCIA criminal history records check" – a check of criminal history information conducted by the Department of State Police in accordance with the Illinois Uniform Conviction Information Act (UCIA).

"Web application" – a computer program on the Department's intranet that is titled "HCW Background Check Registry" and is accessed by signing in through the Department's secure web portal. This program is used to initiate fingerprint-based criminal history records checks pursuant to the Act and this Part.

*"Workforce intermediary" – an organization that functions to provide job training and employment services. Workforce intermediaries include institutions of higher education, faith-based and community organizations, and workforce investment boards. (Section 33(n) of the Act)*

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 955.160 Disqualifying Offenses**

The following offenses are disqualifying under the Act and this Part. Offenses are not considered disqualifying until the effective date of the legislation adding the offenses to the Act, regardless of the date an individual is convicted of the offense (see Appendix A through Appendix C).

- a) Violations under the Criminal Code of 1961 or 2012:
  - 1) Solicitation of murder, solicitation of murder for hire [720 ILCS 5/8-1(b), 8-1.1, and 8-1.2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 8-1.1 and 8-1.2);
  - 2) First degree murder, intentional homicide of an unborn child, second degree murder, voluntary manslaughter of an unborn child, involuntary manslaughter and reckless homicide, concealment of homicidal death, involuntary manslaughter and reckless homicide of an unborn child, and drug-induced homicide [720 ILCS 5/9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, 9-3.3, and 9-3.4] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3; Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 3, 236, 358, 360, 361, 362, 363, 364, 364a, 365, 370, 373, 373a, 417, and 474);
  - 3) Kidnapping, aggravated kidnapping, child abduction, and aiding and abetting child abduction [720 ILCS 5/10-1, 10-2, 10-5, and 10-7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-1, 10-2, 10-5, and 10-7; Ill. Rev. Stat. 1985, ch. 38, par. 10-6; Ill. Rev. Stat. 1961, ch. 38, pars. 384 to 386);
  - 4) Unlawful restraint, aggravated unlawful restraint, and forcible detention [720 ILCS 5/10-3, 10-3.1, and 10-4] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-3, 10-3.1, and 10-4; Ill. Rev. Stat. 1961, ch. 38, pars. 252, 252.1, and 252.4);
  - 5) Indecent solicitation of a child, sexual exploitation of a child, sexual misconduct with a person with a disability, exploitation of a child, and child pornography, promoting juvenile prostitution, custodial sexual

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

misconduct, presence of a sex offender in a school zone, and presence of a sexual predator or sex offender near a public park [720 ILCS 5/11-6, 11-9.1, 11-9.2, 11-9.3, 11-9.4-1, 11-9.5, 11-14.4(a), 11-19.2, 11-20.1, 11-20.1B, and 11-20.3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-6, 11-19.2, and 11-20.1; Ill. Rev. Stat. 1983, ch. 38, par. 11-20a; Ill. Rev. Stat. 1961, ch. 38, pars. 103 and 104);

- 6) Assault; aggravated assault; battery; battery of an unborn child; domestic battery; aggravated domestic battery; aggravated battery; heinous battery; aggravated battery with a firearm; aggravated battery with a machine gun or a firearm equipped with any device or attachment designed or used for silencing the report of a firearm; aggravated battery of a child; aggravated battery of an unborn child; aggravated battery of a senior citizen; or drug-induced infliction of great bodily harm [720 ILCS 5/12-1, 12-2, 12-3, 12-3.05, 12-3.1, 12-3.2, 12-3.3, 12-4, 12-4.1, 12-4.2, 12-4.2-5, 12-4.3, 12-4.4, 12-4.6, and 12-4.7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.6, and 12-4.7; Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 55, 56, and 56a to 60b);
- 7) Tampering with food, drugs, or cosmetics [720 ILCS 5/12-4.5]; (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-4.5).
- 8) Aggravated stalking [720 ILCS 5/12-7.4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-7.4);
- 9) Home invasion [720 ILCS 5/12-11] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-11);
- 10) Criminal sexual assault; aggravated criminal sexual assault; predatory criminal sexual assault of a child; criminal sexual abuse; aggravated criminal sexual abuse [720 ILCS 5/11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 12-13, 12-14, 12-14.1, 12-15, and 12-16] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-1, 11-2, 11-3, 11-4, 11-5, 12-13, 12-14, 12-15, and 12-16; Ill. Rev. Stat. 1985, ch. 38, pars. 11-1, 11-4, and 11-4.1; Ill. Rev. Stat. 1961, ch. 38, pars. 109, 141, 142, 490, and 491);
- 11) Abuse and criminal neglect of a long-term care facility resident [720 ILCS 5/12-4.4a(a) and 12-19] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-19);

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 12) Criminal abuse or neglect of an elderly person or person with a disability [720 ILCS 5/12-4.4a(b) and 12-21] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-21);
- 13) Endangering the life or health of a child; child abandonment [720 ILCS 5/12C-5, 12C-10, 21.5, and 12-21.6] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354; Ill. Rev. Stat. 1961, ch. 38, par. 95);
- 14) Ritual mutilation, ritualized abuse of a child [720 ILCS 5/12-32 and 12-33] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-32 and 12-33);
- 15) Theft; theft of lost or mislaid property; retail theft; identity theft; aggravated identity theft; and credit and debit card fraud [720 ILCS 5/16-1, 16-2, 16-30, 16A-3, 16G-15, 16G-20, 17-32(b), 17-33, 17-34, 17-36, and 17-44] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 16-1, 16-2, and 16A-3; Ill. Rev. Stat. 1961, ch. 38, pars. 62, 207 to 218, 240 to 244, 246, 253, 254.1, 258, 262, 262a, 273, 290, 291, 301a, 354, 387 to 388b, 389, 393 to 400, 404a to 404c, 438, 492 to 496);
- 16) Financial exploitation of an elderly person or a person with a disability [720 ILCS 5/16-1.3 and 17-56] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 16-1.3);
- 17) Forgery [720 ILCS 5/17-3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 17-3; Ill. Rev. Stat. 1961, ch. 38, pars. 151 and 277 to 286);
- 18) Robbery, armed robbery, aggravated robbery [720 ILCS 5/18-1, 18-2, and 18-5] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 18-1 and 18-2);
- 19) Vehicular hijacking, aggravated vehicular hijacking [720 ILCS 5/18-3 and 18-4];
- 20) Burglary, residential burglary, home invasion [720 ILCS 5/19-1, 19-3, and 19-6] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 19-1 and 19-3; Ill. Rev. Stat. 1961, ch. 38, pars. 84 to 86, 88, and 501);
- 21) Criminal trespass to a residence [720 ILCS 5/19-4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 19-4);



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 22) Arson, aggravated arson, residential arson [720 ILCS 5/20-1, 20-1.1, and 20-1.2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 20-1 and 20-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 48 to 53 and 236 to 238);
  - 23) Unlawful use of weapons, unlawful use or possession of weapons by felons or persons in the custody of Department of Corrections facilities; aggravated discharge of a firearm; aggravated discharge of a machine gun or a firearm equipped with a device designed or used for silencing the report of a firearm; reckless discharge of a firearm; aggravated unlawful use of a weapon; unlawful discharge of firearm projectiles; unlawful sale or delivery of firearms on the premises of any school; [unlawful possession of firearm by street gang member](#); possession of a stolen firearm [720 ILCS 5/24-1, 24-1.1, 24-1.2, 24-1.2-5, 24-1.5, 24-1.6, 24-3.2, 24-3.3, and 24-3.8] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 24-1, 24-1.1, 24-1.2, 24-1.2-5, 24-1.5, 24-1.6, [24-1.8](#), 24-3.2, and 24-3.3; Ill. Rev. Stat. 1961, ch. 38, pars. 152, 152a, 155, 155a to 158b, 414a to 414c, 414e, and 414g);
  - 24) Armed violence [720 ILCS 5/33A-2] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 33A-2);
  - 25) Dismembering a human body [720 ILCS 5/20.5].
- b) Violations under the Wrongs to Children Act:
- 1) Endangering life or health of a child [720 ILCS 150/4] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354);
  - 2) Permitting sexual abuse of a child [720 ILCS 5/11-9.1A and 720 ILCS 150/5.1] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2355.1).
- c) Violations under the Illinois Credit Card and Debit Card Act:
- 1) Receiving a stolen credit or debit card [720 ILCS 250/4] (formerly Ill. Rev. Stat. 1991, ch. 17, par. 5917);
  - 2) Receiving a lost or mislaid card with intent to use, sell, or transfer [720 ILCS 250/5] (formerly Ill. Rev. Stat. 1991, ch. 17, par. 5918);

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 3) Selling a credit card or debit card, without the consent of the issuer [720 ILCS 250/6] (formerly Ill. Rev. Stat. 1991, ch. 17, par. 5919);
  - 4) Using a credit or debit card with the intent to defraud [720 ILCS 250/8] (formerly Ill. Rev. Stat. 1991, ch. 17, par. 5921);
  - 5) Fraudulent use of electronic transmission [720 ILCS 250/17.02] (formerly Ill. Rev. Stat. 1991, ch. 17, par. 5930.2).
- d) Violation of Section 53 of the Criminal Jurisprudence Act: Cruelty to children [720 ILCS 115/53] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2368).
- e) Violations under the Cannabis Control Act: Manufacture, delivery, or possession with intent to deliver or manufacture cannabis; cannabis trafficking; delivery of cannabis on school grounds; delivering cannabis to a person under 18; calculated criminal cannabis conspiracy [720 ILCS 550/5(c), (d), (e), (f), (g), 5.1, 5.2, 7, and 9] (formerly Ill. Rev. Stat. 1991, ch. 56½, pars. 705, 705.1, 705.2, 707, and 709).
- f) Violations under the Illinois Controlled Substances Act: manufacture or delivery, or possession with intent to manufacture or deliver, a controlled substance other than methamphetamine, a counterfeit substance, or a controlled substance analog; controlled substance trafficking; manufacture, distribution, advertisement, or possession with intent to manufacture or distribute a look-alike substance; calculated criminal drug conspiracy; criminal drug conspiracy; delivering a controlled, counterfeit or look-alike substance to a person under 18; and engaging or employing a person under 18 to deliver a controlled, counterfeit or look-alike substance [720 ILCS 570/401, 401.1, 404, 405, 405.1, 407, and 407.1] (formerly Ill. Rev. Stat. 1991, ch. 56½, pars. 1401, 1401.1, 1404, 1405, 1405.1, 1407, and 1407.1).
- g) Violation under the Nurse Practice Act: practice of nursing without a license [225 ILCS 65/10-5 and 50-50] (formerly Ill. Rev. Stat. 1991, ch. 111, par. 3506).
- h) Violations under the Methamphetamine Control and Community Protection Act [720 ILCS 646].
- i) Violations under the Humane Care for Animals Act: cruel treatment, aggravated cruelty, and animal torture [510 ILCS 70/3.01(a), 3.02, and 3.03].

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 955.260 Application for Waiver**

- a) *Any student, applicant, individual receiving services from a workforce intermediary or organization providing pro bono legal services, or employee listed on the Health Care Worker Registry may request a waiver of the prohibition against employment by:*
- 1) *Completing a waiver application on a form prescribed by the Department of Public Health:*
    - A) If the individual has previously been employed, the individual shall provide ~~an entire~~ work history or attach a ~~complete~~-resumé covering the most recent five-year period;
    - B) If the individual has been convicted in another state, the individual shall provide information concerning those convictions or attach the complete results of a criminal history records check from the other state; ~~and states~~;
    - C) If the individual has a federal conviction, the individual shall provide information concerning that conviction or attach the complete results of a criminal history records check from the Federal Bureau of Investigation. ~~;~~ ~~and~~
    - ~~D) If the individual has been certified as a nursing assistant in another state, the individual shall attach certificates or verifications;~~
  - 2) *Providing a written explanation of each conviction, to include:*
    - A) *what happened;*
    - B) *how many years have passed since the offense;*
    - C) *the individuals involved;*
    - D) *the age of the individual at the time of the offense; and*

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- E) *any other circumstances surrounding the offense* (Section 40(a) of the Act);
  - 3) Providing proof of completion of a rehabilitation program, if the use of alcohol or other drugs was involved in the offense, and the individual was ordered to participate in a rehabilitation program as part of the judgment;
  - 4) *Providing official documentation showing that all fines have been paid, if applicable, except in the instance of payment of court-imposed fines or restitutions in which the individual is adhering to a payment schedule, and the date probation (or mandatory supervised release) or parole was satisfactorily completed, if applicable* (Section 40(a) of the Act); and
  - 5) Submitting the results of a fingerprint-based criminal history records check.
- b) *The individual may, but is not required to, submit employment and character references and any other evidence demonstrating the ability of the individual or employee to perform the employment responsibilities competently and evidence that the individual does not pose a threat to the health or safety of residents, patients, or clients.* (Section 40(b) of the Act)
  - c) A request for a waiver will automatically be denied unless the individual has met the time periods in Section 955.270(d).
  - d) Each request for waiver consideration shall be accompanied by a fully completed waiver application. The waiver application will not be deemed complete until the Department has received all of the information required by this Section.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 955.320 Removal from Registry of a Department Finding of Neglect**

*An employee or former employee may petition the Department for removal from the Registry of a finding by the Department of neglect by completing and submitting an application for removal of the finding on a form prescribed by the Department.* (Section 28(d) of the Act)

- a) The employee or former employee shall provide on, or with, the application form information concerning:

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- ~~1)~~ ~~His or her entire employment history;~~
- 12) The finding of neglect, including:
  - A) The facts and circumstances related to the finding;
  - B) The number of years since the finding of neglect was imposed;
  - C) The individuals who witnessed, investigated, or possessed pertinent information regarding the finding, or set forth employment decisions based on the finding; and
  - D) The age of the employee or former employee at the time of the offense.
- ~~3)~~ ~~Any and all criminal convictions, including:~~
  - ~~A) The facts and circumstances related to the conviction;~~
  - ~~B) The number of years since the conviction;~~
  - ~~C) The individuals who witnessed, investigated, or possessed pertinent information regarding the conviction; and~~
  - ~~D) Any other information surrounding the offense;~~
- 24) Employment and character references, if the employee or former employee submits references; and
- 35) Any other evidence demonstrating that the employee or former employee does not pose a threat to the health or safety of residents, patients or clients.
- ~~b)~~ ~~The employee or former employee shall submit, with the application form, the results of a livecan fingerprint-based criminal history records check completed within the past 30 days.~~
- be) An application for removal of a finding may be submitted after no less than one

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

year from the date identified within the Final Order affirming the finding, and not more often than once in every 24 months.

- cd) *The Department will remove the finding of neglect from the Health Care Worker Registry, unless the Department determines that removal of the finding is not in the public interest. That determination will be based upon an analysis of the information provided by the applicant in the application for removal of the finding, including, but not limited to, the nature and gravity of the finding and the sufficiency and credibility of the submitted information, as required by this Section, ~~including the results of the fingerprint-based criminal history records check.~~ (Section 28(d) of the Act)*

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

**Section 955.APPENDIX C Disqualifying Offenses that May Be Considered for a Waiver  
by the Submission of a Waiver Application**

<b>Illinois Compiled Statutes Citation</b>	<b>Offense</b>	<b>Additional Offense Added Effective</b>
225 ILCS 65/50-50	Practice of Nursing without a License	8/25/17
510 ILCS 70/3.01(a)	Beating, Cruelly Treating, Tormenting, Starving, Overworking, or Abusing an Animal	8/25/17
510 ILCS 70/3.02	Aggravated Cruelty to a Companion Animal	
510 ILCS 70/3.03	Animal Torture	8/25/17
720 ILCS 5/10-3	Unlawful Restraint	7/1/95
720 ILCS 5/10-3.1	Aggravated Unlawful Restraint	7/1/95
720 ILCS 5/10-4	Forcible Detention	7/1/95
720 ILCS 5/10-5	Child Abduction	7/1/95
720 ILCS 5/10-7	Aiding and Abetting Child Abduction	7/1/95
720 ILCS 5/12-1	Assault	7/1/95
720 ILCS 5/12-2	Aggravated Assault	7/1/95
720 ILCS 5/12-3	Battery	7/1/95
720 ILCS 5/12-3.1	Battery of an Unborn Child	7/1/95
720 ILCS 5/12-3.2	Domestic Battery	7/1/95
720 ILCS 5/12-4.5	Tampering with Food, Drugs or Cosmetics	1/1/98
720 ILCS 5/12-7.4	Aggravated Stalking	1/1/98
<del>720 ILCS 5/12-11</del>	<del>Home Invasion</del>	<del>1/1/98</del>
720 ILCS 5/12-21.6;	Endangering the Life or Health of a Child	1/1/98
720 ILCS 5/12C-5		8/25/17
720 ILCS 5/12C-10	Child Abandonment	8/25/17
720 ILCS 5/12-21.5		
720 ILCS 5/12-32	Ritual Mutilation	1/1/98
720 ILCS 5/12-33	Ritual Abuse of a Child	1/1/98
720 ILCS 5/16-1	Theft	7/1/95
720 ILCS 5/16-2	Theft of Lost or Mislaid Property	1/1/04

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

720 ILCS 5/16A-3	Retail Theft	7/1/95
720 ILCS 5/16G-15;	Identity Theft	1/1/04
720 ILCS 5/16-30		8/25/17
720 ILCS 5/16G-20	Aggravated Identity Theft	1/1/04
720 ILCS 5/17-3	Forgery	1/1/98
720 ILCS 5/17-32(b)	Possession of Another's Credit or Debit Card	8/25/17
720 ILCS 5/17-33	Possession of Lost or Mislaid Credit or Debit Card	8/25/17
720 ILCS 5/17-34	Sale of Credit or Debit Card	8/25/17
720 ILCS 5/17-36	Use of Counterfeited, Forged, Expired, Revoked, or Unissued Credit or Debit Card	8/25/17
720 ILCS 5/17-44	Fraudulent Use of Electronic Transmission	8/25/17
720 ILCS 5/18-1	Robbery	7/1/95
720 ILCS 5/18-3	Vehicular Hijacking	1/1/98
720 ILCS 5/19-1	Burglary	1/1/98
720 ILCS 5/19-3	Residential Burglary	7/1/95
720 ILCS 5/19-4	Criminal Trespass to Residence	7/1/95
720 ILCS 5/20-1	Arson	7/1/95
720 ILCS 5/20-1.2	Residential Arson	1/1/04
720 ILCS 5/24-1	Unlawful Use of Weapons	7/1/95
720 ILCS 5/24-1.1	Unlawful Use or Possession of Weapons by Felons or Persons in the Custody of the Department of Corrections Facilities	1/1/04
720 ILCS 5/24-1.2	Aggravated Discharge of a Firearm	7/1/95
720 ILCS 5/24-1.2-5	Aggravated Discharge of a Machine Gun or a Firearm Equipped with a Device Designed or Used for Silencing the Report of a Firearm	7/18/03
720 ILCS 5/24-1.5	Reckless Discharge of a Firearm	1/1/98
720 ILCS 5/24-1.6	Aggravated Unlawful Use of a Weapon	1/1/04



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

<u>720 ILCS 5/24-1.8</u>	<u>Unlawful Possession of Firearm by Street Gang Member</u>	<u>1/1/04</u>
720 ILCS 5/24-3.2	Unlawful Discharge of Firearm Projectiles	1/1/04
720 ILCS 5/24-3.3	Unlawful Sale or Delivery of Firearms on the Premises of Any School	1/1/04
720 ILCS 5/24-3.8	Possession of a Stolen Firearm	8/25/17
720 ILCS 5/24-3.9	Aggravated Possession of a Stolen Firearm	8/25/17
720 ILCS 5/33A-2	Armed Violence	1/1/98
225 ILCS 65/10-5	Practice of Nursing without a License	1/1/04
720 ILCS 150/4	Endangering Life or Health of a Child	1/1/98
720 ILCS 115/53;	Cruelty to Children	1/1/98
740 ILCS 55/4		8/25/17
720 ILCS 250/4	Receiving Stolen Credit Card or Debit Card	1/1/04
720 ILCS 250/5	Receiving a Credit or Debit Card with Intent to Use, Sell, or Transfer	1/1/04
720 ILCS 250/6	Selling a Credit Card or Debit Card, without the Consent of the Issuer	1/1/04
720 ILCS 250/8	Using a Credit or Debit Card with the Intent to Defraud	1/1/04
720 ILCS 250/17.02	Fraudulent Use of Electronic Transmission	1/1/04
720 ILCS 550/5(c), (d), (e), (f), (g)	Manufacture, Delivery, or Possession with Intent to Deliver, or Manufacture, Cannabis	8/25/17
720 ILCS 550/5.1	Cannabis Trafficking	7/1/95
720 ILCS 550/5.2	Delivery of Cannabis on School Grounds	1/1/98
720 ILCS 550/7	Delivering Cannabis to a Person under 18	1/1/98
720 ILCS 550/9	Calculated Criminal Cannabis Conspiracy	7/1/95
720 ILCS 570/401	Manufacture or Delivery, or Possession with Intent to Manufacture or Deliver, a Controlled Substance Other than Methamphetamine, a Counterfeit Substance, or a Controlled Substance Analog	7/1/95
720 ILCS 570/401.1	Controlled Substance Trafficking	7/1/95

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

720 ILCS 570/404	Distribution, Advertisement, or Possession with Intent to Manufacture or Distribute a Look-alike Substance	7/1/95
720 ILCS 570/405	Calculated Criminal Drug Conspiracy	7/1/95
720 ILCS 570/405.1	Criminal Drug Conspiracy	7/1/95
720 ILCS 570/407	Delivering a Controlled, Counterfeit or Look-alike Substance to a Person under 18	7/1/95
720 ILCS 570/407.1	Engaging or Employing Person under 18 to Deliver a Controlled, Counterfeit or Look-alike Substance	7/1/95
720 ILCS 646	Violations under the Methamphetamine Control and Community Protection Act	9/11/05

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## ILLINOIS STATE POLICE

## NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Firearm Owner's Identification Card Act
- 2) Code Citation: 20 Ill. Adm. Code 1230
- 3) Section Number: 1230.45      Proposed Action: New Section
- 4) Statutory Authority: Implementing and authorized by the Firearm Owner's Identification Card Act [430 ILCS 65] and authorized by Section 2605-120 of the Civil Administrative Code of Illinois [20 ILCS 2605/2605-120].
- 5) A Complete Description of the Subjects and Issues Involved: This Section deals with Part 1230 of Title 20 pertaining to the Firearm Owners Identification Card Act (FOID Act) – specifically, the stolen firearms database provision of the statute.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? Yes
- 11) Statement of Statewide Policy Objectives: These rules will not require a local government to establish, expend, or modify its activities in such a way as to necessitate additional expenditures from local revenues.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may comment to:

Ms. Maureen B. McCurry  
Chief Legal Counsel  
Illinois State Police  
801 South 7th Street, Suite 1000-S  
Springfield, Illinois 62703

## ILLINOIS STATE POLICE

## NOTICE OF PROPOSED AMENDMENT

217/782-7658

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: There is no anticipated impact to small businesses, small municipalities or not for profit corporations.
  - B) Reporting, bookkeeping or other procedures required for compliance: None
  - C) Types of professional skills necessary for compliance: None
- 14) Small Business Impact Analysis: None
- 15) Regulatory Agenda on which this rulemaking was summarized: July 2021

The full text of the Proposed Amendment begins on the next page:

## ILLINOIS STATE POLICE

## NOTICE OF PROPOSED AMENDMENT

TITLE 20: CORRECTIONS, CRIMINAL JUSTICE, AND LAW ENFORCEMENT  
CHAPTER II: ILLINOIS STATE POLICEPART 1230  
FIREARM OWNER'S IDENTIFICATION CARD ACT

## Section

- 1230.10 Definitions
- 1230.20 Application Procedures
- 1230.30 Duration and Renewal of Identification Card
- 1230.40 Sponsorship of a Minor
- [1230.45 Firearm Serial Number System to Identify Firearms Reported Stolen](#)
- 1230.50 Return of FOID Card – Applicant
- 1230.60 Return of Revoked FOID Card – Other
- 1230.70 Appeal
- 1230.80 Judicial Review (Repealed)
- 1230.90 Certification (Repealed)
- 1230.100 Reduction of Remittance (Repealed)
- 1230.110 Retention of Remittance
- 1230.120 Clear and Present Danger Reporting
- 1230.EXHIBIT A Application for Firearm Owner's Identification Card (Form FOID-1.2)  
(Repealed)
- 1230.EXHIBIT B Certification (Repealed)

AUTHORITY: Implementing and authorized by the Firearm Owners Identification Card Act [430 ILCS 65] and authorized by Section 2605-120 of the Civil Administrative Code of Illinois [20 ILCS 2605].

SOURCE: Filed March 8, 1973; codified at 7 Ill. Reg. 9557; amended at 8 Ill. Reg. 21306, effective October 10, 1984; recodified from the Department of Law Enforcement to the Department of State Police at 10 Ill. Reg. 3279; amended at 17 Ill. Reg. 18856, effective October 18, 1993; amended at 22 Ill. Reg. 16629, effective September 8, 1998; amended at 27 Ill. Reg. 10308, effective June 26, 2003; amended at 38 Ill. Reg. 2301, effective December 31, 2013; emergency amendment at 44 Ill. Reg. 6166, effective April 6, 2020, for a maximum of 150 days; emergency expired September 2, 2020; emergency amendment at 44 Ill. Reg. 15819, effective September 3, 2020, for a maximum of 150 days; emergency expired January 30, 2021; emergency amendment at 45 Ill. Reg. 2763, effective February 19, 2021, for a maximum of 150

## ILLINOIS STATE POLICE

## NOTICE OF PROPOSED AMENDMENT

days; emergency expired July 18, 2021; amended at 45 Ill. Reg. 11201, effective August 30, 2021; amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 1230.45 Firearm Serial Number System to Identify Firearms Reported Stolen****a) Access to Illinois information online**

- 1) The Department will establish a component to its FOID/CCL Online System for the purpose of searching stolen gun information as reported by law enforcement agencies which is derived from the Illinois Law Enforcement Agencies Data System (LEADS) and authorized for release to the public.
- 2) This component shall be known as the ISP Stolen Firearms System.
- 3) The information contained within the system may not solely be used as a confirmation that any firearm is stolen.
- 4) The serial or identification number assigned to a particular firearm by the manufacturer may not be unique; duplicates may exist.
- 5) Whether the firearm in question is subject to an active stolen property report, must be verified with the law enforcement agency that reported the firearm theft within LEADS.

**b) Searching the system**

- 1) Effective July 1, 2022, whenever a person sells or transfers a firearm under Section 3 of the Act [430 ILCS 65/3], the seller may access the ISP Stolen Firearms System and enter the firearm identification information for the firearm to be sold or transferred.
- 2) Effective January 1, 2024, whenever a person sells or transfers a firearm under Section 3 of the Act [430 ILCS 65/3], the seller must access the ISP Stolen Firearms System and enter the firearm identification information for the firearm to be sold or transferred.
- 3) Upon accessing the ISP Stolen Firearms System and submitting firearms identification information, the seller will receive a transaction number

## ILLINOIS STATE POLICE

## NOTICE OF PROPOSED AMENDMENT

confirming that they accessed the system and will receive information regarding whether a potential match was identified.

- 4) Effective January 1, 2024, the seller must provide proof of the ISP Stolen Firearm System search and results therefrom to the purchaser prior to completing the sale or transfer.

A) A form printed from the ISP Stolen Firearms System with a transaction number shall serve as proof of the search.

B) Both parties must retain a copy of the form printed from the ISP Stolen Firearms System as a part of the record required by Section 3(b) of the Act.

- 5) Only persons transferring a firearm may access the ISP Stolen Firearms System to search Illinois stolen gun information.

c) Review of potential matches

- 1) The ISP will assign appropriate personnel to follow-up with the local law enforcement agency that reported the firearm theft within LEADS.

- 2) The local law enforcement agency that reported the firearm theft within LEADS will cooperate with the ISP to ensure any firearms transferred pursuant to Section 3(a-25) of the Act have not been reported stolen.

- 3) The seller and buyer shall cooperate with the ISP, as well as the local law enforcement agency that reported the firearm theft within LEADS, in any investigation they may commence regarding a potential match.

(Source: Added at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

## NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Cannabis Regulation and Tax Act
- 2) Code Citation: 68 Ill. Adm. Code 1291
- 3) 

<u>Section Numbers:</u>	<u>Adopted Actions:</u>
1291.10	Amendment
1291.95	New Section
- 4) Statutory Authority: Implementing and authorized by the Cannabis Regulation and Tax Act [410 ILCS 705].
- 5) Effective Date of Rule: December 7, 2021
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rules, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Notice of Proposal published in *Illinois Register*: 45 Ill. Reg. 9527; July 30, 2021
- 10) Has JCAR issued a Statement of Objections to this rulemaking? No
- 11) Differences between Proposal and Final Version: The proposed version originally established requirements for a Responsible Vendor Program, a statutorily mandated training program for which the IDFPR must accept applications in August of odd-numbered years. The amendments detailed the application process and requirements and curriculum requirements for the training. However, the Department had decided to remove that proposed new subsection in the adopted version of this rule.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes
- 13) Will this rulemaking replace an Emergency Rule currently in effect? Yes
- 14) Are there any rulemakings pending on this Part? Yes

<u>Section Number:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
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## DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

## NOTICE OF ADOPTED AMENDMENTS

1291.220                      New Section                      45 Ill. Reg. 13149; October 22, 2021

- 15) Summary and purpose of rulemaking: The adopted amendments establish processes for denial of a license to operate an adult use cannabis dispensary due to an Illinois tax delinquency, including by establishing a provision for notice to the licensee or applicant and a time period to cure the delinquency.
- 16) Information and questions regarding this adopted rulemaking shall be directed to:

Department of Financial and Professional Regulation  
Attention: Craig Cellini  
320 West Washington, 2nd Floor  
Springfield, Illinois 62786

217/785-0813  
Fax: 217/557-4451

The full text of the Adopted Amendments begins on the next page:

## DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

## NOTICE OF ADOPTED AMENDMENTS

## TITLE 68: PROFESSIONS AND OCCUPATIONS

## CHAPTER VII: DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

## SUBCHAPTER b: PROFESSIONS AND OCCUPATIONS

## PART 1291

## CANNABIS REGULATION AND TAX ACT

SUBPART A: GENERAL PROVISIONS

## Section

1291.10	Definitions
1291.50	Tied Applicant
<u>1291.95</u>	<u>Tax Delinquency</u>

AUTHORITY: Implementing and authorized by the Cannabis Regulation and Tax Act [410 ILCS 705]

SOURCE: Adopted by emergency rulemaking at 43 Ill. Reg. 14934, effective December 9, 2019, for a maximum of 180 days; emergency rule expired June 5, 2020; adopted at 44 Ill. Reg. 14103, effective August 24, 2020; emergency amendment at 45 Ill. Reg. 9586, effective July 15, 2021, for a maximum of 150 days; Subpart B of the emergency amendment suspended by the Joint Committee on Administrative Rules at 45 Ill. Reg. 10881, effective August 18, 2021; suspension withdrawn at 45 Ill. Reg. 12206, effective September 16, 2021; emergency amendment to emergency rule at 45 Ill. Reg. 11851, effective September 16, 2021, for the remainder of the 150 days; emergency amendment at 45 Ill. Reg. 13442, effective October 12, 2021, for a maximum of 150 days; amended at 45 Ill. Reg. 16320, effective December 7, 2021.

SUBPART A: GENERAL PROVISIONS**Section 1291.10 Definitions**

Terms not defined in this Section shall have the same meaning as in the Cannabis Regulation and Tax Act [410 ILCS 705]. Nothing in this Part is intended to confer a property or other right, duty, privilege or interest entitling an applicant to an administrative hearing upon denial of a dispensing organization application. The denial of a dispensing organization application does not preclude judicial review of the denial. The following definitions are applicable for purposes of this Part:

"Act" means the Cannabis Regulation and Tax Act [410 ILCS 705].

## DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

## NOTICE OF ADOPTED AMENDMENTS

"ADA" means the Americans With Disabilities Act of 1990 (42 USC 12101).

"Address of record" means the address record by the Department in the applicant's application file maintained by the Department.

"Adult Use Dispensing Organization License" means a license issued by the Department that permits a person to act as a dispensing organization under this Act and any administrative rule made in furtherance of this Act.

"Affiliate" means a Person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, that Person.

"Affiliated entity" means any business entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the Person.

"Applicant" means the Proposed Dispensing Organization Name as stated on a license application.

"Application date" is the date an application for approval was received by the Department.

"Application points" means the number of points a Dispensary Applicant~~an applicant~~ receives on an application for a Conditional Adult Use Dispensing Organization License~~at the conclusion of the scoring process~~.

"Application submission window" means the period between August 1<sup>st</sup> and August 15<sup>th</sup> of every odd numbered year during which the Department will receive applications to be approved as a Responsible Vendor Provider unless the date falls on a holiday or weekend in which case the window is extended to the next business day. The application submission window shall close at 5 p.m. central time on the final day on which applications are accepted.

"Approved list" is the list of providers.

*"BLS region" means a region in Illinois used by the United States Bureau of Labor Statistics to gather and categorize certain employment and wage data. The*

## DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

## NOTICE OF ADOPTED AMENDMENTS

*17 regions in Illinois are: Bloomington, Cape Girardeau, Carbondale-Marion, Champaign-Urbana, Chicago-Naperville-Elgin, Danville, Davenport-Moline-Rock Island, Decatur, Kankakee, Peoria, Rockford, St. Louis, Springfield, Northwest Illinois nonmetropolitan area, West Central Illinois nonmetropolitan area, East Central Illinois nonmetropolitan area, and South Illinois nonmetropolitan area. (Section 1-10 of the Act)*

"Bulk cannabis inventory" means cannabis and cannabis-infused products stored in the reinforced vault in clear, heat-sealed or taped shrink wrap bags or sheeting that is labeled with the date the inventory is sealed, the last four digits of the batch number, the number of items contained within the wrapping, and the date the inventory was last counted. Bulk Cannabis Inventory is included in the dispensing organization's total inventory available for sale.

"By lot" means a randomized method of choosing between two or more Eligible Tied Applicants or Qualifying Applicants ~~eligible applicants~~.

"Cannabis" means marijuana, hashish, and other substances that are identified as including any parts of the plant Cannabis sativa and including:

derivatives or subspecies, such as indica, of all strains of cannabis, whether growing or not;

the seeds thereof, the resin extracted from any part of the plant; and

any compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds, or resin, including tetrahydrocannabinol (THC) and all other naturally produced cannabinol derivatives, whether produced directly or indirectly by extraction.

"Cannabis" does not include:

the mature stalks of the plant;

fiber produced from the stalks, oil or cake made from the seeds of the plant;

## DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

## NOTICE OF ADOPTED AMENDMENTS

any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted from it), fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination;

industrial hemp as defined and authorized under the Industrial Hemp Act [505 ILCS 89].

"Cannabis" does include cannabis flower, concentrate, and cannabis-infused products.

"Cannabis business establishment" means a cultivation center, craft grower, processing organization, infuser organization, dispensing organization, or transporting organization.

"Cannabis flower" means marijuana, hashish, and other substances that are:

identified as including any parts of the plant Cannabis sativa and including derivatives or subspecies, such as indica, of all strains of cannabis; and

raw kief, leaves, and buds

"Cannabis flower" does not include resin that has been extracted from any part of a plant, nor any compound, manufacture, salt, derivative, mixture, or preparation of a plant, its seeds, or resin.

"Cannabis-Infused product" means a beverage, food, oil, ointment, tincture, topical formulation, or another product containing cannabis or cannabis concentrate that is not intended to be smoked.

"Conditional license" means a Conditional Adult Use Dispensing Organization License.

"Department" means the Department of Financial and Professional Regulation.

"Dispensary Applicant" means the Proposed Dispensing Organization Name as stated on an application for a Conditional Adult Use Dispensing Organization License.

## DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

## NOTICE OF ADOPTED AMENDMENTS

"Dispensing organization" means a facility operated by an organization or business that is licensed by the Department to acquire cannabis from a cultivation center, craft grower, processing organization, or another dispensary for the purpose of selling or dispensing cannabis, cannabis-infused products, cannabis seeds, paraphernalia, or related supplies under the Act to purchasers or to qualified registered medical cannabis patients and caregivers. As used in this Part, "dispensing organization" includes a registered medical cannabis organization as defined in the Compassionate Use of Medical Cannabis Program Act [410 ILCS 130] or its successor Act that has obtained an Early Approval Adult Use Dispensing Organization License. (Section 1-10 of the Act)

"Dispensing Organization License" or "License" means any Early Approval Adult Use Dispensing Organization License, Conditional Adult Use Dispensing Organization License, or Adult Use Dispensing Organization License.

"Dispensing organization agent ID card" or "agent ID card" means a document issued by the Department that identifies a person as a dispensing organization agent, agent-in-charge, or principal officer.

"DOA" means the Illinois Department of Agriculture.

"DPH" means the Illinois Department of Public Health.

"Email address of record" means a primary or alternate contact email address recorded by the Department in the applicant's application file maintained by the Department.

"Eligible applicant" means a tied applicant ~~that is~~ eligible to participate in the process by which a remaining available license is distributed by lot.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) and the HIPAA Privacy Rule as found at 45 CFR 164.

"Individual" means a natural person.

"ISP" means the Illinois State Police.

## DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

## NOTICE OF ADOPTED AMENDMENTS

"Laboratory" means an independent laboratory located in Illinois and approved by DOA to have custody and use of controlled substances for scientific and medical purposes and for purposes of instruction, research or analysis.

"Notify" means to send via regular United States mail or email.

"On-site instruction" means class is held at a physical location in-person or remotely by real-time video technology tools.

"Person" means a natural individual, firm, partnership, association, joint stock company, joint venture, public or private corporation, limited liability company, or a receiver, executor, trustee, guardian, or other representative appointed by order of any court~~"License" means a Conditional Adult Use Dispensing Organization License.~~

*"Principal officer" includes a cannabis business establishment applicant or licensed cannabis business establishment's board member, owner with more than 1% interest of the total cannabis business establishment or more than 5% interest of the total cannabis business establishment of a publicly traded company, president, vice president, secretary, treasurer, partner, officer, member, manager member, or person with a profit sharing, financial interest, or revenue sharing arrangement. This definition includes a person with authority to control the cannabis business establishment or a person who assumes responsibility for the debts of the cannabis business establishment. (Section 1-10 of the Act)*

"Qualifying Applicant" means an applicant that submitted an application pursuant to Section 15-30 of the Act that received at least 85% of 250 application points available under Section 15-30 as the applicant's final score and meets the definition of "Social Equity Applicant" as defined in the Act.

"Reinforced vault" means a room built to the specifications listed in Section 1291.220(g).

"Remaining available license" means a license in a BLS region that has not been awarded by the Department at the conclusion of the scoring process period. There may be more than one remaining available license in a BLS region. For example, if four licenses are available in a BLS region and the five highest scoring ~~Dispensary Applicants~~~~applicants~~ receive scores of 245, 240, 235, 235, and 235 points, the applicants receiving 245 and 240 application points will be awarded

## DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

## NOTICE OF ADOPTED AMENDMENTS

licenses and the three applicants receiving 235 points may become Eligible Applicants~~eligible applicants~~. Likewise, if one license is available in a BLS region and there are five Dispensary Applicants~~applicants~~ with the highest score, all five Dispensary Applicants~~applicants~~ may become Eligible Applicants~~eligible applicants~~.

"Scoring process period" is the period of time between the conclusion of the submission period for a conditional license application and when the Department publishes the names of tied applicants that may become eligible applicants.

"Secretary" means the Secretary of the Department of Financial and Professional Regulation.

"State verification system" means a web-based system established and maintained by the State of Illinois that is available to the Department, DOA, ISP, and dispensing organizations and the tracking of the date of sale, amount, and price of cannabis purchased by purchasers.

"Tied applicant" means an application submitted by a Dispensary Applicant pursuant to Section 15-30~~applicant~~ that ~~has~~ received the same number of application points under Section 15-30 as the Dispensary Applicant's final score as one or more top-scoring applications~~other applicants~~ in the same BLS region and would have been awarded a license but for the one or more other top-scoring applications~~applicants~~ that received the same number of application points. Each application for which a Dispensary Applicant was required to pay a required application fee for the application period ending January 2, 2020 shall be considered an application of a separate Tied Applicant.

(Source: Amended at 45 Ill. Reg. 16320, effective December 7, 2021)

**Section 1291.95 Tax Delinquency**

- a) The Department will deny issuance or renewal of a Conditional Adult Use Dispensing Organization License or Adult Use Dispensing Organization License if any principal officer, board member, and/or person having a financial or voting interest of 5% or greater in the licensee or applicant is delinquent in filing any required tax return or paying any amount owed to the State of Illinois.



## DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

## NOTICE OF ADOPTED AMENDMENTS

- b) The Department will notify the applicant or licensee of any determination by the Illinois Department of Revenue that any principal officers, board members, and/or persons having a financial or voting interest of 5% or greater in the licensee or applicant are delinquent in filing any required tax return or paying any amount owed to the State of Illinois.
- c) Upon notification of tax delinquency being sent by the Department to the applicant or licensee, the applicant or licensee shall have 60 days to provide the Department proof that the applicant or licensee is no longer delinquent in filing any required tax return or paying any amount owed to the State of Illinois, as determined by the Illinois Department of Revenue.
- d) If after 60 days the applicant or licensee has not provided the Department proof that the applicant or licensee is no longer delinquent in filing any tax return or paying any amount owed to the State of Illinois, the Department will deny issuance or renewal of a conditional license or Adult Use Dispensing Organization License.

(Source: Added at 45 Ill. Reg. 16320, effective December 7, 2021)

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY AMENDMENTS

- 1) Heading of the Part: Electric Interconnection of Distributed Generation Facilities
- 2) Code Citation: 83 Ill. Adm. Code 466
- 3) 

<u>Section Numbers:</u>	<u>Emergency Actions:</u>
466.90	Amendment
466.130	Amendment
- 4) Statutory Authority: Implementing Section 16-107.5 and authorized by Sections 16-107.5 and 10-101 of the Public Utilities Act [220 ILCS 5/16-107 and 10-101]
- 5) Effective Date of Rules: December 14, 2021
- 6) If these emergency amendments are to expire before the end of the 150-day period, please specify the date on which they are to expire: Upon adoption of the proposed general rulemaking.
- 7) Date filed with the Index Department: December 10, 2021
- 8) A copy of the emergency amendments, including any materials incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Reason for emergency: Public Act 102-662 took effect on September 15, 2021, amending Section 16-107.5 of the Public Utilities Act to require that the Agency, within 90 days of the effective date of the legislation, determine a single standardized cost for Level 1 interconnection and create or contract for an ombudsman to handle interconnection disputes. Given the subject matter of the legislation, the 90-day period in which the Agency must act on those two initiatives, and the inconsistency between the current rules and the new measures, the Agency believes that emergency rulemaking is necessary and appropriate.
- 10) A Complete Description of the Subjects and Issues Involved: Public Act 102-662 took effect on September 15, 2021. Among other things, the legislation amends Section 16-107.5 of the Public Utilities Act to require the Agency, within 90 days of the effective date of the legislation, to determine a single standardized cost for Level 1 interconnection and to create or contract for an ombudsman to handle interconnection disputes. The emergency amendments address these two subjects by changing Section 466.90 to provide for single standardized cost of \$200 and by changing Section 466.130 to establish

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY AMENDMENTS

the use of an external mediator to act as an ombudsman for handling interconnection disputes.

- 11) Are there any other proposed rulemakings pending on this Part? No
- 12) Statement of Statewide Policy Objectives: The emergency rulemaking neither creates nor expands any State mandate on units of local government, school districts, or community college districts.
- 13) Information and questions regarding this emergency rule shall be directed to:

Brian W. Allen  
Office of General Counsel  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701

217/558-2387  
Fax: (217) 524-8928

The full text of the Emergency Amendments begins on the next page:

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY AMENDMENTS

TITLE 83: PUBLIC UTILITIES  
CHAPTER I: ILLINOIS COMMERCE COMMISSION  
SUBCHAPTER c: ELECTRIC UTILITIES

## PART 466

## ELECTRIC INTERCONNECTION OF DISTRIBUTED GENERATION FACILITIES

## Section

466.10	Scope
466.30	Definitions
466.35	Waiver
466.40	Technical Standards
466.45	Pre-Application Report
466.50	Interconnection Requests
466.60	General Requirements
466.70	Lab-Certified Equipment
466.80	Determining the Review Level
466.90	Level 1 Expedited Review

EMERGENCY

466.100	Level 2 Expedited Review
466.110	Level 3 Expedited Review
466.120	Level 4 Review
466.130	Disputes

EMERGENCY

466.140	Records
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466.APPENDIX A	Level 1 Application and Contract
466.APPENDIX B	Certificate of Completion
466.APPENDIX C	Levels 2 to 4 Application
466.APPENDIX D	Levels 1 to 4 Contract
466.APPENDIX E	Interconnection Feasibility Study Agreement
466.APPENDIX F	Interconnection System Impact Study Agreement
466.APPENDIX G	Interconnection Facilities Study Agreement

AUTHORITY: Implementing Section 16-107.5 of the Public Utilities Act [220 ILCS 5/16-107.5] and authorized by Sections 16-107.5 and 10-101 of the Public Utilities Act [220 ILCS 5/16-107.5 and 10-101].

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY AMENDMENTS

SOURCE: Emergency rules adopted at 32 Ill. Reg. 6556, effective April 1, 2008, for a maximum of 150 days; adopted at 32 Ill. Reg. 14504, effective August 25, 2008; amended at 41 Ill. Reg. 862, effective January 20, 2017; emergency amendment at 45 Ill. Reg. 16330, effective December 14, 2021, for a maximum of 150 days.

**Section 466.90 Level 1 Expedited Review****EMERGENCY**

An EDC shall use the Level 1 interconnection review procedures for an interconnection request that meet the requirements specified in Section 466.80(a). An EDC may not impose additional requirements on Level 1 reviews that are not specifically authorized under this Section unless the applicant agrees.

- a) The EDC shall evaluate the potential for adverse system impacts using the following screens, which shall be satisfied:
  - 1) For interconnection of a proposed distributed generation facility to a radial distribution circuit, the total distributed generation connected to the distribution circuit, including the proposed distributed generation facility, may not exceed 15% of the maximum load normally supplied by the distribution circuit.
  - 2) The total capacity of distributed generation facilities connected on the load side of spot network protectors, including the proposed facility, shall not exceed 5% of the spot network's maximum load or 50 kVA, whichever is less.
  - 3) When a proposed distributed generation facility is to be interconnected on a single-phase shared secondary line, the aggregate generation capacity on the shared secondary line, including the proposed distributed generation facility, shall not exceed 20 kVA.
  - 4) When a proposed distributed generation facility is single-phase and is to be interconnected on a center tap neutral of a 240 volt service, its addition may not create an imbalance between the two sides of the 240 volt service of more than 20% of the nameplate rating of the service transformer.
- b) The Level 1 interconnection shall use the following procedures:

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY AMENDMENTS

- 1) The applicant submits an interconnection request using the appropriate form along with the Level 1 application fee (see Appendix A).
- 2) Within 7 business days after receipt of the interconnection request, the EDC shall inform the applicant whether the interconnection request is complete or not. If the request is incomplete, the EDC shall specify what information is missing and the applicant has 10 business days after receiving notice from the EDC to provide the missing information or the interconnection request shall be deemed withdrawn.
- 3) Within 15 business days after the EDC notifies the applicant that its interconnection request is complete, the EDC shall verify whether the distributed generation facility passes all the relevant Level 1 screens.
- 4) If the applicant passes the Level 1 screens and meets the conditions for approval by the EDC, the following timeframes shall apply:
  - A) If the proposed interconnection requires no construction of facilities by the EDC on its own system, the EDC shall send the applicant an executed "Conditional Agreement to Interconnect Distributed Generation Facility" (Appendix A) within 5 business days after notification of the Level 1 review results.
  - B) If the proposed interconnection requires only minor system modifications, the EDC shall notify the applicant of what requirement when it provides the Level 1 results. The applicant must inform the EDC if the applicant elects to continue the application. If the applicant makes such an election and pays the fees specified in the EDC's tariff, the EDC shall provide a standard distributed generation interconnection agreement (see Appendix D), along with a non-binding good faith cost estimate and construction schedule for those upgrades, to the applicant within 30 business days after the EDC receives such an election and the payment of the fee.
  - C) If the proposed interconnection requires more than minor system modifications, the EDC shall notify the applicant of that requirement when it provides the Level 1 results. The applicant must inform the EDC if the applicant elects to proceed with the

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY AMENDMENTS

proposed interconnection. If the applicant makes such an election, the EDC may elect to:

- i) provide a standard distributed generation interconnection agreement (see Appendix D), along with a non-binding good faith cost estimate and construction schedule for those upgrades, within 45 business days after the EDC receives such an election and the applicant pays the fee specified in the EDC's tariff; or
  - ii) notify the applicant that an interconnection facilities study must be performed pursuant to Section 466.120(e)(3). If the applicant elects to proceed with an interconnection facilities study, the EDC shall proceed with the interconnection facilities study according to the timeframes and process in Section 466.120(e)(3).
- 5) Upon approving the interconnection request pursuant to subsection (b)(4), the EDC shall provide to the applicant a signed version of the "Conditional Agreement to Interconnect Distributed Generation Facility" in Appendix A subject to the following conditions:
- A) The distributed generation facility has been approved by local or municipal electric code officials with jurisdiction over the interconnection;
  - B) A certificate of completion (see Appendix B) has been returned to the EDC. Completion of local inspections may be designated on inspection forms used by local inspecting authorities;
  - C) The witness test has been successfully completed if required by the EDC or if the witness test has been waived according to of Appendix A(2)(c)(ii); and
  - D) The applicant has signed a standard distributed generation interconnection agreement (see Appendix A). When an applicant does not sign the agreement within 30 business days after receipt of the agreement from the EDC, the interconnection request is deemed withdrawn unless the applicant requests to have the

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY AMENDMENTS

deadline extended for no more than 15 business days. An initial request for extension shall not be denied by the EDC, but subsequent requests may be denied.

- 6) If the EDC determines and demonstrates that a distributed generation facility does not pass all relevant Level 1 screens, the EDC shall provide a letter to the applicant explaining the reasons that the facility did not pass those screens.
- 7) If a distributed generation facility is not approved under a Level 1 review, and the EDC's reasons for denying Level 1 status are not subject to dispute, the applicant may submit a new interconnection request for consideration under Level 2, Level 3 or Level 4 procedures. The queue position assigned to the Level 1 interconnection request shall be retained, provided that the new interconnection request is made by the applicant within 15 business days after notification that the current interconnection request is denied.

c) The standardized cost for Level 1 Interconnections shall be \$200.

(Source: Amended by emergency rulemaking at 45 Ill. Reg. 16330, effective December 14, 2021, for a maximum of 150 days)

**Section 466.130 Disputes****EMERGENCY**

- a) A party shall attempt to resolve all disputes regarding interconnection promptly and in a good faith manner. A party shall provide prompt written notice of the existence of the dispute, including sufficient detail to identify the scope of the dispute, to the other party in order to attempt to resolve the dispute in a good faith manner.
- b) An informal meeting between the parties shall be held within 10 business days after receipt of the written notice. Persons with decision-making authority from each party shall attend such meeting. In the event said dispute involves technical issues, persons with sufficient technical expertise and familiarity with the issue in dispute from each Party shall also attend the informal meeting. If the parties agree, such a meeting may be conducted by teleconference.



## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY AMENDMENTS

- c) Ombudsman ~~Subsequent to the informal meeting referred to in subsection (b), a party may seek resolution of any disputes through the complaint or mediation procedures available at the Consumer Services Division (CSD) of the Commission. Dispute resolution at the Commission will be initially conducted in an informal, expeditious manner to reach resolution with minimal costs and delay. If no resolution is reached after informal discussions, either party may file a formal complaint with the Commission.~~
- 1) If the parties are unable to resolve the dispute through an informal meeting or meetings, either party may submit the interconnection dispute to an Ombudsman for non-binding arbitration. The party electing arbitration shall notify the other party of the request in writing.
- 2) For purposes of this Section, any claims arising out of interconnection disputes shall be settled by arbitration administered by the American Arbitration Association (Ombudsman), as the term Ombudsman is used in 220 ILCS 5/16-107.5(h-5)(2) in accordance with the American Arbitration Association's Commercial Arbitration Rules, except awards shall be non-binding.
- d) At the conclusion of the procedures in subsection (c) of this Section, either party may initiate a formal complaint with the Commission and ask for an expedited resolution of the dispute. If the complaint seeks expedited resolution, any written recommendation of the Ombudsman shall be appended to the complaint, and the complaint shall seek only Commission approval of the Ombudsman's Recommendation for Resolution.
- ~~e~~) Pursuit of dispute resolution shall not affect an interconnection applicant with regard to consideration of an interconnection request or an interconnection applicant's position in the EDC's interconnection queue of any pending application or interconnection agreement.

(Source: Amended by emergency rulemaking at 45 Ill. Reg. 16330, effective December 14, 2021, for a maximum of 150 days)

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

- 1) Heading of the Part: Multi-Year Integrated Grid Plans
- 2) Code Citation: 83 Ill. Adm. Code 475
- 3) 

<u>Section Numbers:</u>	<u>Emergency Actions:</u>
475.10	New Section
475.20	New Section
475.100	New Section
475.110	New Section
475.120	New Section
475.200	New Section
475.210	New Section
475.220	New Section
475.300	New Section
475.310	New Section
475.APPENDIX A	New Section
475.APPENDIX B	New Section
- 4) Statutory Authority: Implementing Section 16-105.17 and authorized by Sections 16-105.17 and 10-101 of the Public Utilities Act and Section 5-45.9 of the Illinois Administrative Procedure Act [220 ILCS 5/16-107 and 10-101; 5 ILCS 100/5-45.9].
- 5) Effective Date of Rules: December 14, 2021
- 6) If these emergency rules are to expire before the end of the 150-day period, please specify the date on which they are to expire:
- 7) Date filed with the Index Department: December 10, 2021
- 8) A copy of the emergency rules, including any materials incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Reason for emergency: Public Act 102-662, which took effect on September 15, 2021, added Section 16-105.17 to the Public Utilities Act. The new section requires certain electric utilities in the State to engage in a program of multi-year integrated distribution planning. One component of that program is a stakeholder process, to be conducted as a beginning phase to help develop multi-year integrated grid plans. Section 16-105.17(i) directs the Agency to put into effect emergency rules "no later than 90 days after the effective date" of the legislation, and Section 5-45.9 of the Illinois Administrative

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

Procedure Act expressly authorizes the Agency to adopt emergency rules "for the expeditious and timely implementation of Section 16-105.17."

- 10) A Complete Description of the Subjects and Issues Involved: P.A. 102-662 added Section 16-105.17 to the Public Utilities Act. The new section requires certain electric utilities in the State to engage in a program of multi-year integrated distribution planning. One component of that program is a stakeholder process, to be conducted as a beginning phase to help develop multi-year integrated grid plans. The emergency rules are designed to govern the stakeholder process and the workshops that are a critical portion of that process. The emergency rules prescribe the content of initial submissions of information by the utilities, the conduct of the workshops, procedures for submitting data requests, the handling of confidential materials, the post-workshop comment period, and the preparation and submission of a report by the facilitator. The ensuing docketed proceedings will be governed by the Agency's Rules of Practice, 83 Ill. Adm. Code 200.
- 11) Are there any other proposed rulemakings pending on this Part? No
- 12) Statement of statewide policy objectives: The emergency rulemaking neither creates nor expands any State mandate on units of local government, school districts, or community college districts.
- 13) Information and questions regarding this emergency rule shall be directed to:

Brian W. Allen  
Office of General Counsel  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701

217/558-2387  
Fax: (217) 524-8928

The full text of the Emergency Rules begins on the next page:

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

TITLE 83: PUBLIC UTILITIES  
CHAPTER I: ILLINOIS COMMERCE COMMISSION  
SUBCHAPTER c: ELECTRIC UTILITIESPART 475  
MULTI-YEAR INTEGRATED GRID PLANS

## SUBPART A: GENERAL PROVISIONS

## Section

475.10 Application and Scope

EMERGENCY

475.20 Definitions

EMERGENCY

## SUBPART B: INITIAL UTILITY INFORMATIONAL SUBMISSIONS

## Section

475.100 Information to be Submitted by Each Utility in Advance of the Stakeholder  
Process

EMERGENCY

475.110 Treatment of Confidential Materials

EMERGENCY

475.120 Preservation of Confidential Materials

EMERGENCY

## SUBPART C: STAKEHOLDER PROCESS

## Section

475.200 General Provisions

EMERGENCY

475.210 Workshops

EMERGENCY

475.220 Date Requests

EMERGENCY

## SUBPART D: COMMENT PERIOD AND REPORT

## Section

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

475.300 Comments

EMERGENCY

475.310 Facilitator's Report

EMERGENCY

475.APPENDIX A Confidentiality

EMERGENCY

475.APPENDIX B Data Requests

EMERGENCY

AUTHORITY: Implementing Section 16-105.17 of the Public Utilities Act and authorized by Sections 16-105.17 and 10-101 of the Public Utilities Act and Section 5-45.9 of the Illinois Administrative Procedure Act [220 ILCS 5/16-105.17 and 10-101; 5 ILCS 100/5-45.9].

SOURCE: Emergency rules adopted at 45 Ill. Reg. 16338, effective December 14, 2021, for a maximum of 150 days.

## SUBPART A: GENERAL PROVISIONS

**Section 475.10 Scope****EMERGENCY**

This Part applies to electric utilities serving more than 500,000 retail customers in Illinois and governs the Stakeholder Process as described in this Part.

**Section 475.20 Definitions****EMERGENCY**

Terms defined in Article XVI of the Public Utilities Act (Act) [220 ILCS 5] shall have the same meaning for purposes of this part as they have under Article XVI of the Act, unless further defined in this Part. The following words and terms, when used in this Part, have the following meanings unless the context indicates otherwise:

"Act" means the Illinois Public Utilities Act.

"Classified Information" has the meaning ascribed to it by 50 U.S.C § 3164(2) (effective December 20, 2019).

"Commission" means the Illinois Commerce Commission.

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

"Critical Energy/Electric Infrastructure Information" (CEII) ) includes: (i) information related to the transmission or distribution of electrical energy that could be useful to a person in planning an attack on critical infrastructure and goes beyond merely giving the location of the infrastructure, as well as (ii) information related to physical or virtual assets of the bulk power system, the incapacity of which would negatively affect national security, economic security, and/or public health or safety, and which information is designated as critical electric infrastructure information by the U.S. Department of Energy. 18 C.F.R. § 388.113(c).

"Critical Infrastructure Information" has the meaning ascribed to it by 6 U.S.C. §671(3) (effective November 6, 2018).

*"Demand response" means measures that decrease peak electricity demand or shift demand from peak to off-peak periods. [220 ILCS 16-105.17(b)]*

"Director" means the Director of the Commission's Division of Integrated Distribution Planning.

*"Distributed energy resources" or "DER" means a wide range of technologies that are connected to the grid, including those that are located on the customer side of the customer's electric meter and can provide value to the distribution system, including, but not limited to, distributed generation, energy storage, electric vehicles, and demand response technologies. [220 ILCS 16-105.17(b)]*

"Electric Distribution System" means the facilities and equipment owned and operated by the Utility and used to transmit electricity to ultimate usage points such as homes and industries from interchanges with higher voltage transmission networks that transport bulk power over longer distances. The voltage levels at which electric distribution systems operate differ among areas, but generally operate at less than 100 kilovolts (kV) of electricity. "Electric Distribution System" excludes facilities under the operational control of the Regional Transmission Operator that would otherwise be classified as distribution.

*"Environmental justice communities" means the definition of that term based on existing methodologies and findings, used and as may be updated by the Illinois Power Agency and its Program Administrator in the Illinois Solar for All Program. [220 ILCS 16-105.17(b)]*

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

"Facilitator" means the independent, third-party facilitator selected by the Commission to run, administer and facilitate the Stakeholder Process described in this Part.

"Personal Information" includes, without limitation, a utility customer's name, address, telephone number, and other personally identifying information, as well as information about a customer's electric usage, electric billing, payment for electric services, or load shape data, which is either expressly linked with a utility customer's identity, or which could be linked with a utility customer's identity through reasonable effort.

"Plan" means the Multi-Year Integrated Grid Plan to be submitted by each Utility and approved, or approved as modified, by the Commission, in a future docketed proceeding pursuant to Section 16-105.17(f) of the Act.

"Protected Critical Infrastructure Information" has the meaning ascribed to it by 6 C.F.R. § 29.2 (effective September 1, 2006).

"Staff" means the Staff of the Illinois Commerce Commission.

"Stakeholder Process" means the Multi-Year Integrated Grid Plan Development Stakeholder Process prescribed by Section 16-105.17(e) of the Public Utilities Act, but does not include any docketed proceedings in which a Utility's Plan may be finalized; such docketed proceedings will be governed by the Commission's Rules of Practice, 83 Ill. Adm. Code 200.

"Utility" means an electric utility serving more than 500,000 retail customers in Illinois.

## SUBPART B: INITIAL UTILITY INFORMATIONAL SUBMISSIONS

**Section 475.100 Information to be Submitted by Each Utility in Advance of the Stakeholder Process**  
**EMERGENCY**

On or before December 13, 2021, each Utility shall submit the following information to the Director, which the Director shall cause to be posted on the Commission's website, subject to the provisions governing the treatment of confidential materials set forth in this Part:

- a) a preliminary proposal outlining the capital investments the utility may undertake in the 5-year period following the year in which the Stakeholder Process is conducted, together with supporting data;

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

- b) a summary of how the utility plans to invest in its Electric Distribution System in order to meet the system's projected needs during the five-year period following the year in which the Stakeholder Process is conducted;
- c) system and locational data on reliability, resiliency, DER, and service quality;
- d) identification of proceedings before the Commission that include information that will aid in analysis of the Utility's Electric Distribution System capital projects placed into service in the preceding nine years with citations to where such information can be found in each proceeding so identified.
- e) Preliminary proposals on programs and policies applicable to each component of the Utility's Plan, as well as any information on which the Utility relied in developing those proposals, which proposals are designed to aid in or further any of the following undertakings and goals:
  - 1) coordination of the State's renewable energy goals, climate and environmental goals with the utility's distribution system investments, and programs and policies over a five-year planning horizon to maximize the benefits of each while ensuring Utility expenditures are cost-effective;
  - 2) optimization of utilization of electricity grid assets and resources to minimize total system costs;
  - 3) support of efforts to bring the benefits of grid modernization and clean energy, including, but not limited to, deployment of distributed energy resources, to all retail customers, and support efforts to bring at least 40% of the benefits of those benefits to Equity Investment Eligible Communities. Nothing in this paragraph is meant to require a specific amount of spending in a particular geographic area;
  - 4) enabling of greater customer engagement, empowerment, and options for energy services;
  - 5) reduction of grid congestion, minimize the time and expense associated with interconnection, and increase the capacity of the distribution grid to host increasing levels of distributed energy resources, to facilitate



## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

availability and development of distributed energy resources, particularly in locations that enhance consumer and environmental benefits;

- 6) ensuring of opportunities for robust public participation through open, transparent planning processes;
  - 7) provision for the analysis of the cost-effectiveness of proposed system investments, which takes into account environmental costs and benefits;
  - 8) achievement or support of achievement of Illinois environmental goals, including those described in Section 9.10 of the Environmental Protection Act [415 ILCS 5/9.10] and Section 1-75 of the Illinois Power Agency Act [20 ILCS 3855/1-75], and emissions reductions required to improve the health, safety, and prosperity of all Illinois residents;
  - 9) support for existing Illinois policy goals promoting the long-term growth of energy efficiency, demand response, and investments in renewable energy resources;
  - 10) provision of sufficient public information to enable non-emitting customer-owned or third-party distributed energy resources, acting individually or in aggregate, to seamlessly and easily connect to the grid, provide grid benefits, support grid services, and achieve environmental outcomes, without necessarily requiring Utility ownership or controlling interest over those resources, and enable those resources to act as alternatives to Utility capital investments; and
  - 11) provision of delivery services at rates that are affordable to all customers, including low-income customers.
- f) Public versions of data provided by the Utility to the auditor conducting the Baseline Grid Assessment pursuant to Section 16-105.10 of the Act. Information submitted prior to the workshops responsive to this Subpart (f) should be supplemented with public versions of any documents the Utility provides to the auditor during the pendency of the workshop process, at the same time the Utility provides those materials to the auditor.

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

- g) Initial submissions shall be supplemented through the data request process contained in Section 475.230 of this Part throughout and to the end of the Workshop Process.

**Section 475.110 Treatment of Confidential Materials  
EMERGENCY**

- a) Utilities may designate documents, data or other information as confidential, commercially sensitive, or system security related, whether submitted to the Director under this Part, produced in response to data requests made by stakeholders, or otherwise produced, used, exchanged, or shared in the course of the Stakeholder Process. A Utility shall have the burden of showing that the materials, documents, data or other information is entitled to confidential treatment and shall provide a public, redacted version of any materials designated as confidential.
- b) Those persons seeking access to confidential, commercially sensitive, or system security related information and data shall agree electronically or in writing to fully observe and comply with the terms of the Non-Disclosure Agreement attached as Form 1 to Appendix A. A Utility shall have no obligation to provide any person with access to confidential, commercially sensitive or system security related information and data until the individual seeking access has executed the Non-Disclosure Agreement.
- c) A utility shall not be required to disclose Classified Information, Protected Critical Infrastructure Information, CEII, Personal Information or Confidential Information in response to any Data Request, except in the manner and to the extent provided in the Protective Order attached as Appendix A.

**Section 475.120 Preservation of Confidential Materials  
EMERGENCY**

Materials designated as confidential shall not be used, exchanged or shared except subject to the procedure established in this section, and subject to the terms of the Protective Order appended to this Part as Appendix A or such other Protective Order the Commission might adopt. The Commission shall have authority to supervise, protect, and restrict access to all confidential, commercially sensitive, or system security related information and data, and shall be authorized to take all necessary steps to protect that information from unauthorized disclosure.

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

## SUBPART C: STAKEHOLDER PROCESS

**Section 475.200 General Provisions  
EMERGENCY**

- a) Any party or person wishing to participate in the Stakeholder Process shall be permitted to do so, subject to the provisions of this Part.
- b) Each utility shall participate fully in all Commission-sponsored workshops and events associated with the Stakeholder Process as requested by the Facilitator or Director, and shall send representatives with appropriate knowledge, expertise and authority to each event. While neither utility is prohibited from attending workshops relating to the Stakeholder Process applicable to another utility, neither is required to attend workshops relating to the Stakeholder Process applicable solely to another Utility.

**Section 475.210 Workshops  
EMERGENCY**

- a) *Workshops should be organized and facilitated in a manner that encourages representation from diverse stakeholders, ensuring equitable opportunities for participation, without requiring formal intervention or representation by an attorney. Workshops should be held during both day and evening hours, in a variety of locations within each electric utility's service territory, and should allow remote participation. [220 ILCS 5/16-105.17(e)(2)].*
- b) *Workshops shall not be considered settlement negotiations, compromise negotiations, or offers to compromise for the purposes of Illinois Rule of Evidence 408. All materials shared as a part of the workshop process, and that are not determined to be confidential as described in Section 16-105.17(e)(3) of the Act, shall be made publicly available on a website made available by the Commission. [220 ILCS 5/16-105.17(e)(6)].*
- c) The workshop process should provide a forum for stakeholders to effectively and efficiently provide feedback and input to the Utility.
- d) A series of a minimum of six workshops shall be held for each Utility subject to this Part, although one or more of the workshops may be held jointly for Utilities

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

when the information provided or discussed at the workshops is general in nature or applicable to more than one Utility.

- e) Workshops shall be held at times and places as the Facilitator shall designate, subject to the other requirements of this Section. The location of workshops, and the manner in which interested persons may participate shall be made public on the Commission's website, at a time as far in advance of each workshop as is feasible. The Facilitator may give additional notice of workshops as s/he deems appropriate or likely to encourage participation.
- f) The Facilitator shall prepare an agenda for each workshop. Participants or interested parties may submit topics for discussion at workshops to the Director or to the Facilitator, in such a manner as shall be prescribed, directed or agreed upon at the workshops. The workshop agenda prepared by the Facilitator shall be made public on the Commission's website, at a time as far in advance of each workshop as is feasible.
- g) Workshops shall be run, administered and facilitated by the Facilitator. Workshop participants shall conduct themselves in a manner that will encourage cooperation and the free exchange of views.
- h) As the Facilitator is required to base his or her Report in part on stakeholder comments and recommendations offered verbally or in writing during the workshops, all workshops shall be recorded or transcribed and the Director shall cause a recording or transcription of each workshop to be prepared and posted on the Commission's website. The Facilitator shall disclose this fact at the beginning of each workshop. Participants shall participate in the workshops subject to this requirement and shall have no expectation of privacy in any statements or remarks made. No information that has been identified as Confidential and subject to any protective order may be discussed in any workshop.
- i) Any stakeholder wishing to present a proposal on programs or policies effecting a Utility's Plan must provide a copy of that proposal, together with all documentation on which the stakeholder relied in preparing that proposal, to the Utility, the Director and Facilitator no less than five business days before the workshop in which the proposal will be presented or discussed.

**Section 475.220 Data Requests  
EMERGENCY**

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

- a) Workshop participants shall be permitted to submit data requests to the Utility that is the subject of each series of workshops. Data requests may be submitted by electronic mail.
- b) Data Requests should conform to the following guidelines:
  - 1) Data requests should be served using the form in Appendix B. No data requests may be served pursuant to this Part after the conclusion of the final workshop in the workshop process.
  - 2) Copies of the data requests should be provided to the Facilitator and the Director when served on the Utility. The Director or his designee will cause the data requests to be published on the Commission's website.
  - 3) Workshop participants shall submit one set of data requests to a utility at a time, and shall not submit additional request until the Utility has responded to the previous set.
  - 4) Each set of data requests may contain no more than 10 requests. Notwithstanding this limitation, a data request may contain subparts.
  - 5) Workshop participants should review existing data requests and responses before issuing data requests, and should not request information that has been requested in a previous data request by the participant or any other participants.
  - 6) Workshop participants should not request information that is readily publicly available.
  - 7) Data requests must be made in good faith, seek to avoid undue burden, cost and harassment, and may seek only existing information in the Utility's possession or control and cannot request or demand that Utilities create any document or provide any analysis that did not exist prior to the data requests.
  - 8) All data requests must seek information that is relevant to the workshops process and which will further discussion and consideration of the Utility's Electric Distribution System Planning in the workshops.

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

- 9) Data requests received after 5 PM CST will be considered received the next calendar day.
- c) Before the first workshop, each Utility shall designate a person or persons to whom data requests may be directed, including that person's name and e-mail address. The Director shall ensure the name and contact information for each Utility is posted on the Commission's website.
- d) Each Utility shall submit responses to data requests in accordance with the following guidelines:
  - 1) In no event shall a Utility take more than 14 days to respond to a data request, unless additional time for responding is requested in writing and the Director agrees to such additional time
  - 2) Copies of the response should be submitted to the party promulgating the request, the Facilitator and the Director. The Director or his assistant will cause the responses to be published on the Commission's website, except to the extent the responses are marked confidential.
  - 3) If a Utility submits a response marked confidential, the Utility should also submit a public version of the response, with only those portions of the response containing confidential information redacted, for publication on the Commission's website.
  - 4) Information obtained under this Section may be utilized in a proceeding initiated pursuant to Section 16-105.17(f) of the Act, subject to such limitations on admissibility of evidence as set forth in the Commission's Rules of Practice, and usual practices and procedures related to admissibility of evidence. Information obtained under this Section may not be utilized for any other purpose.
- e) Each Utility shall exercise good faith in responding to data requests regardless of whether they are submitted in proper form.
- f) All data requests and responses shall be sent to the Director or his designee at the same time, who shall cause them to be posted on the Commission's website.

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

- g) If a Utility receives a Data Request that seeks production of information similar or identical to information requested in a Data Request propounded by another stakeholder, the Utility's Response to the duplicative request may consist of the date on which the initial response was provided and the data request number to which the Utility responded.
- h) The chief administrative law judge of the Commission shall assign one or more administrative law judges to the Stakeholder Process, whose sole function in the Process shall be to resolve disputes regarding data requests as provided for in this Section. The Commission's Rules of Practice, codified at 83 Ill. Adm. Code 200 (effective June 17, 2019) and usual practices and procedures related to the discovery process shall govern such disputes.

## SUBPART D: COMMENT PERIOD AND REPORT

**Section 475.300 Comments  
EMERGENCY**

On conclusion of each series of workshops, a comment period of 14 days shall commence, during which interested parties, workshop participants and stakeholders may submit comments and recommendations in advance of the Utility's Plan filing. Comments shall be submitted in writing to the Facilitator and to the Director or his designee. Comments shall be submitted no later than 14 days after the conclusion of the series of workshops.

**Section 475.310 Facilitator's Report  
EMERGENCY**

*Based on the workshop process and stakeholder comments and recommendations offered verbally or in writing during the workshops and in writing during the comment period following the workshops, the independent third-party facilitator shall prepare a report, to be submitted to the Commission no later than July 1, 2022, describing the stakeholders, discussions, proposals, and areas of consensus and disagreement from the workshop process, and making recommendations to the Commission regarding the utility's Plan. Interested stakeholders shall have an opportunity to provide comment on the independent third-party facilitator report. [220 ILCS 5/16-105.17(e)(6)].*

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

**Section 475.APPENDIX A Confidentiality  
EMERGENCY****MULTI-YEAR INTEGRATED GRID PLAN STAKEHOLDER PROCESS****Section 16-105.17, Public Utilities Act****INDEPENDENT BASELINE ASSESSMENT - AUDITOR'S REPORT****Section 16-105.10, Public Utilities Act****PROTECTIVE ORDER REGARDING PERSONAL, PROPRIETARY, AND CRITICAL  
INFRASTRUCTURE INFORMATION**

By the Commission:

Section 16-105.17(e) of the Public Utilities Act (the Act) provides for a Stakeholder Process to promote the transparency of utility distributions system investments and the planning process for those investments. In aid of this Stakeholder Process, the Commission will, through emergency rules codified at 83 Ill. Adm. Code 475, require each electric utility serving more than 500,000 retail customers in Illinois to submit substantial information regarding its infrastructure investments and the technical characteristics and capabilities of its distribution grid to the Director of the Commission's Division of Integrated Distribution Planning. In Illinois, those utilities are Commonwealth Edison Company (ComEd) and Ameren Illinois Company d/b/a Ameren Illinois (AIC and together with ComEd, the Utilities). Further, each Utility's Stakeholder Process consists of a minimum of six workshops, in the course of which, pursuant to statute, "workshop participants [are afforded] opportunities to submit data requests to the [U]tility, and receive



## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

responses in accordance with the [U]tility's obligations under the law, prior to the workshop[.]”

220 ILCS 5/16-105.17(e)(5). The Commission is authorized by statute to develop procedures and processes to enable sharing confidential data and data that includes personally identifiable information, while ensuring the confidentiality of the information. 220 ILCS 5/16-105.17(e)(3).

This Protective Order is entered by the Commission under that authority.

In the course of the Stakeholder Process, participants, stakeholders, interested persons and their attorneys or representatives may request or receive certain confidential or confidential and proprietary information from ComEd and AIC, including but not limited to information which could be used to pose a threat to the operation and security of the transmission or distribution system, or customer-specific information, by way of documents, answers to discovery requests, through informal discussions, or through another method of recording or transmitting information, including but not limited to any electronic, e-mail, or other computer-related communication. To protect against the inappropriate use or disclosure of such information and materials and to facilitate disclosure in this case, it is hereby ordered, pursuant to Sections 4-404 and 5-108 of the Act, 220 ILCS 5/4-404, 5-108, and Section 83 Illinois Administrative ("Ill. Adm.") Code 200.430, as follows:

**I. BACKGROUND AND DEFINITIONS**

The Department of Homeland Security describes the nation's critical infrastructure as "provid[ing] the essential services that underpin American society and serve as the backbone of

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

our nation's economy, security, and health. We know it as the power we use in our homes, the water we drink, the transportation that moves us, the stores we shop in, and the communication systems we rely on to stay in touch with friends and family."<sup>1</sup> Federal law recognizes that "[p]rivate business, government, and the national security apparatus increasingly depend on an interdependent network of critical physical and information infrastructures, including telecommunications, energy, financial services, water, and transportation sectors," and that a "continuous national effort is required to ensure the reliable provision of cyber and physical infrastructure services critical to maintaining the national defense, continuity of government, economic prosperity, and quality of life in the United States." 42 U.S.C. § 5195c(b)(2), (3). ComEd and AIC's distribution systems contain "critical infrastructure" including "systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters." 42 U.S.C. § 5195c(e).

Information concerning critical infrastructure is subject to a variety of protections under law. In pursuit of the objective that "physical or virtual disruption of the operation of the critical infrastructures of the United States be rare, brief, geographically limited in effect, manageable, and minimally detrimental to the economy, human and government services, and national

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<sup>1</sup> <https://www.dhs.gov/what-critical-infrastructure>

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

security of the United States," federal law recognizes that necessary actions must be "carried out in a public-private partnership involving corporate and non-governmental organizations." 42 U.S.C. § 5195c(c)(1), (2).

Federal law defines various classes of critical infrastructure. Critical electric infrastructure means "a system or asset of the bulk-power system, whether physical or virtual, the incapacity or destruction of which would negatively affect national security, economic security, public health or safety, or any combination of such matters." 18 C.F.R. § 388.113(c)(3). Critical energy infrastructure means "systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect national security, economic security, public health or safety, or any combination of such matters" that are related to "production, generation, transportation, transmission, or distribution of energy." 18 C.F.R. § 388.113(c)(2), (4). In particular, certain information related to the reliability and resiliency of the transmission or distribution systems may be classified under several federal laws and regulations applicable to information affecting national security.

*Classified Information*

The disclosure of classified information is prohibited by law. "Classified national security information is information created or received by an agency of the federal government or a government contractor that would damage national security if improperly released. Since 1940, the President has managed the system of classifying information by executive order (E.O.); the most recent order concerning classified national security information is E.O. 13526, signed

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

by President Obama on December 29, 2009."<sup>2</sup> Classified information "means any information that has been determined pursuant to Executive Order No. 12356 of April 2, 1982, or successor orders, or the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], to require protection against unauthorized disclosure and that is so designated." 50 U.S.C § 3164(2). Information may be classified under the terms of Executive Order 13526 if "the information is owned by, produced by or for, or is under the control of the United States Government"; it falls within the categories described in Section 1.4 of the Order; and an authorized government agent or agency<sup>3</sup> determines "that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage."<sup>4</sup> Information is subject to classification under Executive Order 13526 if "unauthorized disclosure could reasonably be expected to cause identifiable or describable<sup>5</sup> damage to the national security in accordance with section 1.2 of this order, and it pertains to, [*inter alia*]:"

- scientific, technological, or economic matters relating to national security;
- United States Government programs for safeguarding nuclear materials or facilities;

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<sup>2</sup> See <https://www.archives.gov/isoo/faqs>. See also 50 USC § 3161.

<sup>3</sup> Executive Order 13526, ¶ 1.3, 75 FR 707 (Dec. 29, 2009).

<sup>3</sup> *Id.* at ¶1.1.

<sup>3</sup> *Id.* at ¶ 1.2(a).

<sup>4</sup> *Id.* at ¶1.1.

<sup>5</sup> *Id.* at ¶ 1.2(a).

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

- vulnerabilities or capabilities of systems, installations, infrastructures, projects or plans, or protection services relating to the national security.<sup>6</sup>

To the extent that ComEd or AIC hold information that has been classified by the United States Government as top secret, secret, or confidential, such information is exempt from disclosure.

*Protected Critical Infrastructure Information*

Federal law defines certain "Critical Infrastructure Information" ("CII") as:

... information not customarily in the public domain and related to the security of critical infrastructure or protected systems, including documents, records or other information concerning:

(A) actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by either physical or computer-based attack or other similar conduct (including the misuse of or unauthorized access to all types of communications and data transmission systems) that violates Federal, State, or local law, harms interstate commerce of the United States, or threatens public health or safety;

(B) the ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation thereto, risk management planning, or risk audit; or

(C) any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation

6 U.S.C. § 671(3); 6 C.F.R. § 29.2(b).

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<sup>6</sup> *Id.* at ¶¶ 1.4(e)-(g).

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

CII may, when received by the United States Department of Homeland Security, be verified as "Protected Critical Infrastructure Information" ("PCII"), pursuant to 6 U.S.C. § 671 et seq. and 6 C.F.R. § 29.1 et seq. Department of Homeland Security regulations define PCII as:

... validated CII, ... including the identity of the submitting person or entity and any person or entity on whose behalf the submitting person or entity submits the CII, that is voluntarily submitted, directly or indirectly, to [The Department of Homeland Security] for its use regarding the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other appropriate purpose, and any information, statements, compilations or other materials reasonably necessary to explain the CII, put the CII in context, describe the importance or use of the CII, when accompanied by an express statement as described in 6 CFR 29.5.

6 C.F.R. § 29.2(g).

Due to the sensitivity of PCII, federal regulations strictly limit the use of such information when in the hands of the federal government and insofar as it may be shared with state or local governments. In particular, all "Federal, State and local government entities shall protect and maintain" PCII, 6 C.F.R. § 29.5(c), and persons or entities subject to the PCII regulations may only disseminate PCII to government employees for the purposes of "securing the critical infrastructure or protected systems, analysis, warning, interdependency study, recovery, reconstitution, or for another appropriate purpose including, without limitation, the identification, analysis, prevention, preemption, and/or disruption of terrorist threats to the homeland." 6 C.F.R. § 29.8(b). "State and local governments may use PCII only for the purpose of protecting critical infrastructure or protected systems, or as set forth elsewhere in these rules."

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

6 C.F.R. § 29.8(d)(2). And, PCII "may not be used, directly or indirectly, for any collateral regulatory purpose." 6 C.F.R. § 29.8(b). Furthermore, "PCII shall not, without the written consent of the person or entity submitting such information, be used directly by any Federal, State or local authority, or by any third party, in any civil action arising under Federal, State, local, or tribal law." 6 C.F.R. § 29.8(i). These protections, applicable to agents of the government and to persons holding certain security clearances (including certain [utility] personnel), underscore the importance of such information to the security of the United States. This Protective Order addresses the treatment of PCII and CII that may be requested in the Stakeholder Process.

*Critical Energy/Electric Infrastructure Information*

Information concerning the design, operation, reliability, and resiliency of the [utility] system, including information that is not classified or designated as PCII, may also constitute "Critical Energy/Electric Infrastructure Information" ("CEII"). "Critical electric infrastructure information" means:

information related to critical electric infrastructure, or proposed critical electrical infrastructure, generated by or provided to the Commission or other Federal agency other than classified national security information, that is designated as critical electric infrastructure information by the Commission or the Secretary of the Department of Energy pursuant to section 215A(d) of the Federal Power Act. Such term includes information that qualifies as critical energy infrastructure information under the Commission's regulations. Critical Electric Infrastructure Information is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(3) and shall not be made available by any Federal, State, political subdivision or tribal authority pursuant to any Federal,

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

State, political subdivision or tribal law requiring public disclosure of information or records pursuant to section 215A(d)(1)(A) and (B) of the Federal Power Act.

"Critical energy infrastructure" information means:

specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) Relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) Could be useful to a person in planning an attack on critical infrastructure; (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and (iv) Does not simply give the general location of the critical infrastructure.

18 C.F.R. § 388.113(c)(2). The release of certain other information relating to the Utilities' transmission or distribution systems and functions could also pose a threat to public safety and security.

*Personal Information*

The personal information of individual Utility customers is entitled to a variety of protections under Illinois law.<sup>7</sup> The Act extends protection to a "customer's name, address, telephone number, and other personally identifying information, as well as information about the customer's electric usage," 220 ILCS 5/16-108.6(d), and "customer-specific billing, usage, or load shape data," 220 ILCS 5/16-122(b). The Commission has defined "customer specific information" as "information about the customer's use of or payment for electric utility [service]

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<sup>7</sup> See, e.g., 815 ILCS 505/2HH (Illinois Consumer Fraud and Deceptive Business Practices Act); 20 ILCS 3855/1-92 (Illinois Power Agency Act); 815 ILCS 530/5 (Personal Information Protection Act); 5 ILCS 140/7(1)(c) (Illinois Freedom of Information Act).



## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

that is either expressly linked with a customer's identity or could, with reasonable effort, be linked to the customer's identity," and has prohibited the disclosure of such information. *See Ill. Commerce Comm'n on its Own Motion*, ICC Docket No. 13-0506, Order (Jan. 28, 2014) at 17.

Finally, the Stakeholder Process may also involve the disclosure of commercially sensitive information which is confidential and proprietary to ComEd, AIC, or other parties.

*The Public Utilities Act and Commission Rules*

The Public Utilities Act and Illinois law empower the Commission to take action to protect or condition the disclosure of certain information, including sensitive infrastructure information, personal information, and confidential and proprietary information, including by the use of a Protective Order and associated confidentiality agreements among parties to Commission proceedings. 83 Ill. Adm. Code 200.430; 220 ILCS 5/4-404.<sup>8</sup> Such information would be exempt from disclosure by an Illinois agency under the Illinois Freedom of Information Act. 5 ILCS 140/7(1)(k).

To protect classified information, PCII, CEII, similar sensitive information, personal information, and confidential and proprietary information from disclosure contrary to law or the public interest, it is hereby ordered, pursuant to 220 ILCS 5/4-404 and 83 Ill. Adm. Code 200.430, as follows:

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<sup>8</sup> Section 4-404 provides, "[t]he Commission shall provide adequate protection for confidential and proprietary information furnished, delivered or filed by any person, corporation or other entity, including proprietary information provided to the Commission by the Illinois Power Agency." 220 ILCS 5/4-404.

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

**II. PROCESS FOR NOTIFICATION THAT A REQUEST SEEKS CLASSIFIED INFORMATION, PROTECTED CRITICAL INFRASTRUCTURE INFORMATION, OR SIMILAR SENSITIVE INFORMATION**

1. Where ComEd or AIC believe in good faith that a data request or other request for information seeks classified information, PCII, or that such information may be responsive to such a request for information, [utility] will notify the stakeholder requesting the information ("Requesting Party") of that good faith determination, and provide a good faith, general description of the nature of the documents or claim asserted in a manner that protects the information from disclosure. The proponent of designation of information as classified, PCII, or confidential information shall have the burden of showing that the information in question is properly so designated.

2. If a Requesting Party does not agree with the Utility's determination that responsive documents or information is classified, PCII, or otherwise exempt from disclosure, the Requesting Party shall give the Utility reasonable notice, by e-mail to the Utility's designated recipient of data requests, of the reasons supporting its belief that its request for information seeks information other than classified information, PCII, or information that is otherwise exempt from disclosure. The Utility shall make a good faith effort to resolve the issue, but in doing so shall not reveal the substance of any classified information, PCII, or other information that is exempt from disclosure.

3. Information deemed classified pursuant to federal law and regulation is exempt from disclosure. PCII is exempt from disclosure, except as set forth in 6 C.F.R. § 29.8. A

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

Requesting Party that is a government entity may consult the PCII Program Manager with questions regarding the protection of PCII from disclosure, as provided in 6 C.F.R. § 29.8(g).

4. Where a document includes PCII, classified information, or information that is otherwise exempt from disclosure, [utility] will produce the document with the specific exempt information clearly marked as exempt from disclosure under federal law.

### **III. PROCESS FOR PROTECTION OF CUSTOMER-SPECIFIC INFORMATION**

5. Where the Utility believes in good faith that a discovery request or other request for information seeks customer-specific information, or that such information may be responsive to such a request for information, the Utility will notify the Requesting Party of that good faith determination. The proponent of designation of information as personal information shall have the burden of showing that the information in question is properly so designated.

6. If a Requesting Party does not agree with [utility's] determination that responsive documents or information include customer-specific information, the Requesting Party shall give the Utility reasonable notice, by e-mail to [utility's] designated recipient of data requests, of the reasons supporting its belief that its request for information seeks information other than customer-specific information. The Utility shall make a good faith effort to resolve the issue, but in doing so shall not reveal any customer-specific information.

7. Customer-specific information is exempt from disclosure. However, where responsive, relevant information is available in the form requested, the Utility shall anonymize

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

that information and provide the anonymized information to the Requesting Party. Information may be anonymized pursuant to the "15/15 Rule," *see Ill. Commerce Comm'n on its Own Motion*, ICC Docket No. 13-0506, Order (Jan. 28, 2014) at 9, 17, or in another format that precludes a determination of the customers' usage characteristics or other personally identifying data of individual end users. *Id.* at 17. Alternatively, if such anonymization is not possible, the Producing Party shall produce the document with the Customer-Specific information redacted, and will label the page(s) that contain such information as "Customer-Specific", signifying that the Producing Party has in good faith made a legal and factual determination that the information is as described.

**IV. PROCESS FOR DESIGNATION OF CONFIDENTIAL INFORMATION**

8. Where any Party believes in good faith that a specific document that it will produce contains information that is entitled to protection as confidential under the law, the Producing Party shall identify such information by marking such information "Confidential," signifying that the Producing Party has in good faith made a legal and factual determination that the information is as described. The proponent of designation of information as confidential shall have the burden of showing that the information in question is properly so designated. The Producing Party shall visually distinguish such information from other information appearing in the same document.

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

9. Where any Producing Party believes in good faith that specific information it will convey orally includes information that is entitled to protected treatment under the law, the Producing Party shall identify such specific information by stating that it is "Confidential," signifying that the Producing Party has made a good faith legal and factual determination that Confidential Information will be, or has been, conveyed. The Producing Party shall also provide written confirmation within three business days of such communication to all recipients that Confidential Information was conveyed. The written confirmation must generally indicate the Confidential Information that was provided, without repeating the substance of the communication.

10. Each specific document so marked or specific information so identified will be referred to hereafter as "Confidential Information." Information so designated shall be afforded all protections given to Confidential Information set forth herein, as applicable, unless and until a contrary ruling is made by the Commission. Procedures relating to challenges to "Confidential" designations are set forth below.

V. **CONFIDENTIAL CRITICAL ENERGY/ELECTRIC INFRASTRUCTURE INFORMATION (CEII)**

11. CEII is Confidential Information, and includes: (i) information related to the transmission or distribution of electrical energy that could be useful to a person in planning an attack on critical infrastructure and goes beyond merely giving the location of the infrastructure, as well as (ii) information related to physical or virtual assets of the bulk power system, the

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

incapacity of which would negatively affect national security, economic security, and/or public health or safety, and which information is designated as critical electric infrastructure information by the U.S. Department of Energy. 18 C.F.R. § 388.113(c). Where any Party believes in good faith that a specific document that is responsive to a data request contains information that is CEII, the Producing Party shall provide the document with the CEII redacted. The proponent of designation of information as CEII shall have the burden of showing that the information in question is properly so designated. Due to the open and public nature of the Stakeholder Process, and security concerns inherent in releasing CEII in such a process, Utilities will have no obligation to produce CEII during the Stakeholder Process.

**VI. OTHER CONFIDENTIAL INFORMATION**

12. Subject to rights to challenge Confidential designations made by a Producing Party described herein, neither information that is produced and designated as Confidential Information nor any information contained therein or obtained therefrom, shall be delivered, exhibited, or disclosed to any person (other than Commission officers and employees, who are not subject to this order, but are governed by 220 ILCS 5/4-404 and 5/108, and the Office of the Attorney General, which is governed by the Attorney General Act, 15 ILCS 205/6.5(a)-(d)) who has not read this order, signed the Certification, attached hereto, and delivered the Certification to the Producing Party or otherwise demonstrated agreement with the Certification in a manner established by the Commission.

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

13. Persons who comply with Paragraph 0 above shall use or disclose the Confidential Information only in preparation for and conduct of the Stakeholder Process, and then solely as provided in this order, and shall take all reasonable precautions to keep the Confidential Information secure in accordance with the purposes and intent of this order. This includes appropriate precautions to prevent the unauthorized transfer of information in any type of electronic format. All Confidential Information produced or exchanged in the course of the Stakeholder Process shall be used solely for the purpose of the Stakeholder Process. Consistent with Paragraph 12 above, this paragraph is not applicable to the Commission Staff.

14. Parties may make non-CEII Confidential Information available only to those who have executed the attached Form 1 for the Utility from which it seeks information. Parties shall not make more than ten copies of any Confidential Information unless the Producing Party otherwise agrees in writing. This includes the dissemination of information in an electronic format including, but not limited to, e-mail transmission. The Producing Party, at its election, may provide ten copies, in which event additional copies shall not be made unless the Producing Party otherwise agrees in writing. This includes the electronic scanning of documents or dissemination of electronic documents via e-mail or by other means of electronic sharing, such as placing electronic documents on a shared access network. Consistent with Paragraph 12 above, this paragraph is not applicable to the Commission Staff.

15. If a party inadvertently produces information not marked "Confidential" and the Producing Party subsequently notifies the recipient (and confirms in writing) that such

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

information is Confidential, the receiving party will treat such information in accordance with the provisions of this Order and will use its best efforts to recall or retrieve any such information that has been distributed not in accordance with this Order. In the event that **Error! Reference source not found.** any party seeks to use or uses any Confidential Information in the Stakeholder Process, the following shall apply:

a. The documents containing Confidential Information shall be sealed and served only on the Commission Staff and the parties granted access to the Confidential Information pursuant to this Order. This includes, but is not limited to, the service of documents in electronic formats (attorneys may distribute Confidential Information so received as provided herein).

b. The pages containing Confidential Information shall be clearly marked and the cover of the documents shall indicate that Confidential Information is contained within the document inside. The Confidential Information itself shall be clearly marked within those pages. In the case of electronic data or documents, such designation shall be made by indicating that the CD-ROM, disk, or other media containing electronic data contains Confidential Information.

c. The Commission shall treat all submissions containing Confidential Information as confidential and shall segregate Confidential Information in its files and on its electronic network and databases or by such other means as it determines to be appropriate. Confidential Information, as discussed below, shall not be posted publicly



## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

on the Commission's electronic filing system maintained pursuant to 83 Ill. Adm. Code 200.1000, *et seq.*, or the Commission's website,

d. A copy of any documents with the Confidential Information redacted shall be provided to individuals and their attorneys who are not granted access pursuant to this Order.

e. Each Producing Party will maintain a list of all persons granted access to Confidential Information pursuant to this order, and will make that list available to other parties upon request.

16. If at any time another court, administrative agency, person, or entity subpoenas, requests or orders production of Confidential Information or documents containing the same, the party receiving the subpoena, request, or order shall promptly notify the Producing Party of that fact and provide the Producing Party with an opportunity to seek appropriate remedies in order to adequately protect the release of any Confidential Information. The period of time for which documents will remain protected after completion of the Stakeholder Process is addressed below and may be further addressed in subsequent rulings.

17. All persons possessing Confidential Information or copies of documents containing Confidential Information (including but not limited to transcripts, discovery responses, briefs, e-mails, disks) shall, within 15 days after receiving a written, oral, or electronic request from the Producing Party and after the conclusion of the Stakeholder Process, return all those materials to the Producing Party or shall destroy the materials and certify in writing to the

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

Producing Party that such materials have been destroyed. Persons receiving Confidential Information shall also destroy all notes, working papers, e-mail, disks and computer or other network memories and other documents containing Confidential Information and shall, upon request from the Producing Party, within 15 days of such request, certify in writing to the Producing Party that such notes, working papers, documents and electronic records have been so destroyed. However, a Party need not affirmatively take steps to destroy information that is automatically stored in back-up electronic systems so long as such information is not otherwise retrieved by such Party. This Order shall remain in effect for a period of five years from its date of entry, unless such period shall be extended at some future time pursuant to applicable Commission rules. This paragraph is not applicable to the Commission Staff.

**VII. CHALLENGES TO CONFIDENTIAL DESIGNATIONS; RESOLUTION OF DISPUTES**

18. If a party does not agree with the Producing Party's designation of documents and information as "Confidential" or the withholding of information as CEII, the party (the "Challenging Party") shall give the Producing Party reasonable written notice, by e-mail to the Producing Party's attorneys of record, of the challenge. The Producing Party and the Challenging Party shall attempt to negotiate a satisfactory resolution of the issue. If the Producing Party continues to believe the Confidential Information contains information that justifies such designation, it shall so inform the Challenging Party, in writing, within five business days of receipt of the Challenging Party's objection. If the Challenging Party continues

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

to object to the confidential designation, it may file a written notice of objection with the Commission. This filing shall identify the documents or portions thereof that are the subject of the challenge, but need not provide reasons in support of the challenge inasmuch as the burden is on the Producing Party to justify the confidential designation. At that point, if the Producing Party wants to maintain the confidentiality of the information, it shall file a motion, within five business days of the written objection, requesting such relief. That motion shall provide in detail, for each document or type of document under challenge, the basis for seeking confidential treatment. An opportunity to file a response will be provided. A document marked "Confidential" shall be treated as such by all parties during the pendency of any challenge to such designation, until a ruling is issued removing such designation. In the event of a challenge to the confidentiality designation of the Producing Party, the Producing Party shall bear the burden to support its designation. Notwithstanding the forgoing, a party may only challenge a designation of material by a federally regulated entity as CEII before the Federal Energy Regulatory Commission and courts of the United States, as appropriate given the entity making the designation (*e.g.*, a designation under authority of the United States Department of Energy is not reviewable by FERC).

**VIII. APPLICABILITY OF ORDER TO STAFF AND THE ILLINOIS ATTORNEY GENERAL**

19. Commission Staff personnel are governed by Sections 220 ILCS 5/4-404 and 5-108 regarding the disclosure of confidential information or documents and are not subject to this

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

Order except that Staff is hereby authorized by the Commission, pursuant to 220 ILCS 5/5-108 to disclose “Confidential” information otherwise subject to nondisclosure under 220 ILCS 5/5-108 to those individuals who have signed Form 1 or are otherwise legally authorized to receive such information, in accordance with the terms and provisions of this Order and any applicable federal law or regulation,. Other than as set forth in the preceding sentence, Staff is not subject to the terms and provisions of this Order including, but not limited to, the terms and provisions as set forth above.

20. The Office of the Attorney General is governed by 15 ILCS 205/6.5(a)-(d) and will receive information in this proceeding on behalf of the People of the State of Illinois. The Office of the Attorney General shall not disclose Confidential Information except in accordance with the terms of this Order. Nothing in this Order is intended to limit or supersede the Attorney General’s rights or obligations under all applicable laws, rules, and regulations of the State of Illinois, including but not limited to the Attorney General Act and the State Records Act, 5 ILCS 160/1.5 *et seq.*

**IX. OBJECTIONS TO DISCOVERY ON OTHER GROUNDS**

21. This Order is not intended to describe all materials as to which a party may make an objection to production, and nothing in this Order shall prevent a party from objecting to discovery requests pursuant to the Commission's Rules of Practice or, to the extent applicable, the Illinois Code of Civil Procedure, the Rules of the Supreme Court, or other law, including the relevancy, materiality, or admissibility of any information requested. Likewise, nothing in this

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

order prevents any party from seeking review of any designation made by a Producing Party pursuant hereto.

**X. REMEDIES**

22. Each Party agrees that any violation of this Order by unauthorized disclosure of any Confidential Information may result in liability for damages and penalties provided by law and that the Producing Party shall have the right immediately to pursue all legal and equitable remedies, including specific performance of the terms of this Order and compensatory damages for breach, provided that a showing that the information so disclosed is not entitled to confidential treatment under the law, is a defense against any and all claims under this Order.

23. Designations that are not made in good faith, including, but not limited to blanket designations made without consideration of the nature of the specific information being designated, shall constitute a violation of this Order. Nothing in this Order shall limit or supersede any protections applicable to information under other state or federal law.

24. Should any party, its attorneys, experts, or anyone else acting on its behalf violate or disregard any provision of this Order, the Utility shall have the right to seek immediate and specific enforcement of this Order from the Administrative Law Judge or any other appropriate tribunal together with any other appropriate relief.

25. This Order does not affect any party's right to make appropriate objections as to the relevancy, materiality, or admissibility of any information requested, furnished, or received as a result of this Order.

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

**XI. OTHER CONSIDERATIONS**

26. All procedures and requirements in 83 Ill. Adm. Code 200.430 and 83 Ill. Adm. Code 200.605 remain fully applicable to the Stakeholder Process. Further protective orders or rulings may be issued, as needed.

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

Form 1

**STATE OF ILLINOIS****ILLINOIS COMMERCE COMMISSION****MULTI-YEAR INTEGRATED GRID PLAN STAKEHOLDER PROCESS****Section 16-105.17, Public Utilities Act****INDEPENDENT BASELINE ASSESSMENT - AUDITOR'S REPORT****Section 16-105.10, Public Utilities Act****CERTIFICATION FOR ACCESS TO CONFIDENTIAL INFORMATION (Form 1)**

I, \_\_\_\_\_, certify that I am a(n) attorney/consultant/employee  
(circle one) for \_\_\_\_\_, a participant in the Stakeholder Process,  
and that I need access to Confidential Information, as designated under the Protective Order (the  
“Order”), that Commonwealth Edison Company will produce in the Stakeholder Process. I have  
read the Order, submit to the jurisdiction of Illinois and the Illinois Commerce Commission for  
purposes of enforcement thereof, and agree to abide by all of its terms. I further certify that any  
Confidential Information (as designated under the Order) I receive will be used by me solely for  
the purposes stated, and as set forth in, the Order.

Agreed: \_\_\_\_\_

ILLINOIS COMMERCE COMMISSION

NOTICE OF EMERGENCY RULES

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Employer: \_\_\_\_\_

Employer's  
Address: \_\_\_\_\_

Party Representing: \_\_\_\_\_



## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

Form 1

## STATE OF ILLINOIS

## ILLINOIS COMMERCE COMMISSION

**MULTI-YEAR INTEGRATED GRID PLAN STAKEHOLDER PROCESS****Section 16-105.17, Public Utilities Act****INDEPENDENT BASELINE ASSESSMENT - AUDITOR'S REPORT****Section 16-105.10, Public Utilities Act****CERTIFICATION FOR ACCESS TO CONFIDENTIAL INFORMATION (Form 1)**

I, \_\_\_\_\_, certify that I am a(n) attorney/consultant/employee  
(circle one) for \_\_\_\_\_, a participant in the Stakeholder Process, and  
that I need access to Confidential Information, as designated under the Protective Order (the  
“Order”), that Ameren Illinois Company d/b/a Ameren Illinois will produce in the Stakeholder  
Process. I have read the Order, submit to the jurisdiction of Illinois and the Illinois Commerce  
Commission for purposes of enforcement thereof, and agree to abide by all of its terms. I further  
certify that any Confidential Information (as designated under the Order) I receive will be used by  
me solely for the purposes stated, and as set forth in, the Order.

Agreed: \_\_\_\_\_

ILLINOIS COMMERCE COMMISSION

NOTICE OF EMERGENCY RULES

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Employer: \_\_\_\_\_

Employer's  
Address: \_\_\_\_\_

Party Representing: \_\_\_\_\_

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

**Section 475.APPENDIX B Data Requests  
EMERGENCY****ILLINOIS COMMERCE COMMISSION****[Participant] DATA REQUESTS [number] THROUGH [number]**

Company: [Utility]

Regarding: **Multi-Year Integrated Grid Plans -Stakeholder Process**Date Submitted: **[date submitted]**

[Participant hereby submits Staff Data Requests [number] through [number] to [utility] (“[utility]” or “the Company”). Responses should be delivered using best efforts but no later than [14 days from date of submission] (“Response Due Date”), in accordance with the instructions set forth below.

**DEFINITIONS AND INSTRUCTIONS**

1. “Relate to” or “refer to” shall mean, in addition to their customary and usual meaning, to reflect on, to pertain to, support, evidence, constitute, or mention.
2. “And” as well as “or” are to be construed either disjunctively or conjunctively so as to bring within the scope of this request any matters that might be construed outside its scope.
3. The terms “document” or “documents” are intended to be comprehensive, including without limitation any kind of written or graphic material, whether typed, handwritten, printed, computer-generated, or matter of any kind from which information can be derived, however produced, reproduced or stored on paper, cards, machines, tapes, film, electronic facsimile, disks, computer tapes, printouts, computer programs or computer storage devices or any other medium, of any nature whatsoever, including all originals, copies and drafts.
4. When asked to “identify” a person, provide that person's name, job title and last known business address.

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

5. All documents requested herein are all those in the custody of, possession of, or control of the Company or its experts, consultants, agents, employees or representatives (including attorneys), or to which the Company or its experts, consultants, agents, employees or representatives (including attorneys) have access.
6. If any of the information requested in a data request cannot be furnished, please indicate what information is not being provided and the reason that it cannot be provided.
7. If the Company asserts any privilege as to any documents responsive to this request, it shall identify the author(s) of the document, the addressee(s), the recipients(s) of copies, the date of the document, the nature of the document (e.g., letter, memorandum, handwritten notes), the length of the document, the document's current location, and the specific reason(s) why the Company contends that the document is privileged or otherwise protected from discovery.
8. The response to each data request question should begin on a new page. As part of each response, please identify the data request question to which the response is made by typing it at the top of the page. In addition, each response should identify the name, job title and telephone number of the person or persons responsible for providing the information requested for each data request question. If any person so identified is not a witness in this proceeding, the response shall also identify the witness or witnesses who will be responsible for the answering of cross-examination questions pertaining to both the request and the response.
9. Documents provided as part of a response should be attached to the sheet containing the response. Each page of all documents provided in response to any data request question should be clearly marked with the data request question number, unless stapled together, in which case only the first page need be marked.
10. Please provide individual responses as they become available. If, in your responses to a data request, you make reference to other documents or data requests previously submitted in this process, please specifically identify where the information sought by [requestor] in each question can be found.
11. Electronic responses rather than paper responses are preferred. If data is provided in response to a particular request, such data should be provided in an electronic format that allows data manipulation (i.e., spreadsheet – preferably Microsoft Excel - or database – preferably Microsoft Access -- not .pdf). If a portion of a response needs to be provided in paper, please provide the entire response in paper and also provide electronically the

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF EMERGENCY RULES

portion that is able to be provided electronically. Responses shall be provided on or before the Response Due Date as follows:

Electronic responses shall be provided to the following persons:

[name and e-mail address of Requestor]

[Second name and e-mail address of requestor]

If a paper response is required (i.e., where an electronic response cannot be provided), the paper response shall be provided to the following persons:

[name and street address of Requestor]

[name and street address of second Requestor]

12. The Company must seasonably supplement or amend any prior answer or response whenever new or additional information subsequently becomes known to the Joint Applicants. The Company must also seasonably supplement any prior response to the extent of documents, objects or tangible things which subsequently come into the Company's possession or control or become known to the Company.
13. Please serve your responses to these data requests to the requesting party, the Facilitator, and the Director or his designee. Data request responses should not be served upon Administrative Law Judges.

**DATA REQUESTS [number] THROUGH [number]**

1.01

1.02

1.03

1.04

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF EMERGENCY AMENDMENTS

- 1) Heading of the Part: Immunization Registry Code
- 2) Code Citation: 77 Ill. Adm. Code 689
- 3) 

<u>Section Numbers:</u>	<u>Emergency Actions:</u>
689.10	Amendment
689.20	Amendment
689.30	Amendment
689.40	Amendment
689.60	Amendment
689.70	Amendment
689.80	Amendment
689.90	Amendment
689.100	New Section
- 4) Statutory Authority: Immunization Data Registry Act [410 ILCS 527]
- 5) Effective Date of Rule: December 13, 2021
- 6) If this emergency rulemaking is to expire before the end of the 150-day period, please specify the date on which they are to expire: This emergency rulemaking will expire at the end of the 150-day period, upon repeal of the emergency rulemaking, or upon adoption of permanent rulemaking, whichever comes first.
- 7) Date Filed with the Index Department: December 8, 2021
- 8) A copy of the emergency rule, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Reason for Emergency: This emergency rulemaking is adopted in response to the Governor JB Pritzker's Gubernatorial Disaster Proclamations issued related to COVID-19.

Section 5-45 of the Illinois Administrative Procedure Act (IAPA) defines "emergency" as "the existence of any situation that any agency finds reasonably constitutes a threat to the public interest, safety, or welfare." The COVID-19 vaccine has created strong public interest in accessing data contained in the Department's Immunization Registry. Immediate clarity is needed as to the purpose of the Registry and who can access the Registry and for what purpose. Public confidence in the purpose of the Registry and

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF EMERGENCY AMENDMENTS

protection of the data contained in the Registry is important to protect the integrity of the Registry and promote use of the Registry. Without a robust Immunization Registry, the Department will be unable to track immunization coverage needed to protect the welfare and health of the citizens of Illinois.

- 10) A Complete Description of the Subject and Issues: This rulemaking seeks to update multiple provisions of the Part to clarify the purpose of the Department's Immunization Registry, including the data to be submitted to the Registry, who may access the Registry and the purposes under which Registry data may be accessed.

- 11) Are there any other rulemakings pending on this Part?

<u>Section Numbers:</u>	<u>Proposed Actions:</u>	<u>Illinois Register Citations:</u>
689.10	Amendment	45 Ill. Reg. 9530; July 30, 2021
689.20	Amendment	45 Ill. Reg. 9530; July 30, 2021
689.30	Amendment	45 Ill. Reg. 9530; July 30, 2021
689.40	Amendment	45 Ill. Reg. 9530; July 30, 2021
689.60	Amendment	45 Ill. Reg. 9530; July 30, 2021
689.70	Amendment	45 Ill. Reg. 9530; July 30, 2021
689.80	Amendment	45 Ill. Reg. 9530; July 30, 2021
689.90	Amendment	45 Ill. Reg. 9530; July 30, 2021
689.100	New Section	45 Ill. Reg. 9530; July 30, 2021

- 12) Statement of Statewide Policy Objective: This rulemaking will not create or expand a State mandate.

- 13) Information and questions regarding this emergency rulemaking shall be directed to:

Department of Public Health  
Attention: Tracey Trigillo, Rules Coordinator  
Lincoln Plaza  
524 South 2nd Street, 6th Floor  
Springfield, IL 62701

(217)782-1159  
dph.rules@illinois.gov

The full text of the Emergency Amendments begins on the next page:

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF EMERGENCY AMENDMENTS

## TITLE 77: PUBLIC HEALTH

## CHAPTER I: DEPARTMENT OF PUBLIC HEALTH

## SUBCHAPTER k: COMMUNICABLE DISEASE CONTROL AND IMMUNIZATIONS

## PART 689

## IMMUNIZATION REGISTRY CODE

## Section

689.10 Definitions

[EMERGENCY](#)

689.20 Incorporated and Referenced Materials

[EMERGENCY](#)

689.30 Registry Development and Purposes

[EMERGENCY](#)

689.40 Immunization Data Provided to the Registry

[EMERGENCY](#)

689.50 Enrollment of Provider Sites

689.60 Individual User Agreement

[EMERGENCY](#)

689.70 Confidentiality and Access of Information

[EMERGENCY](#)

689.80 Opt-Out Option

[EMERGENCY](#)

689.90 Use of Registry for Public Health Emergency Purposes

[EMERGENCY](#)[689.100 Registry Digital Platform](#)[EMERGENCY](#)

689.APPENDIX A Registry Access Allowed for Each User Group Type

AUTHORITY: Implementing and authorized by the Immunization Data Registry Act [410 ILCS 527].

SOURCE: Adopted at 39 Ill. Reg. 8012, effective May 22, 2015; emergency amendment at 45 Ill. Reg. 9607, effective July 16, 2021, for a maximum of 150 days; emergency amendment to emergency rule at 45 Ill. Reg. 10874, effective August 19, 2021, for the remainder of the 150 days; emergency expired December 12, 2021; emergency amendment at 45 Ill. Reg. 16382, effective December 13, 2021 for a maximum of 150 days.



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF EMERGENCY AMENDMENTS

**Section 689.10 Definitions****EMERGENCY**

"Act" means the Immunization Data Registry Act.

"Authorized user" means an individual who has signed an Individual User Agreement and Confidentiality Statement, and to whom the Department has provided credentials authorizing that person access to the Registry.

"Consent" means permission and authorization to access, disclose, or allow individual personal information or personal identifiers to be used for vaccine verification purposes.

"Department" means the Illinois Department of Public Health or its designated agent.

"Designee" means individuals, acting under the authority of a health care provider or another category of authorized user, who have been specifically delegated responsibility to access the Registry and perform functions permitted by the user.

"Director" means the Director of the Department or his or her designee.

"Health care provider" or "Provider" means any person licensed and authorized to administer or order the administration of any immunization in Illinois. Health care provider includes the clinics, facilities, hospitals and pharmacies where the licensed health care provider works, as well as Illinois licensed long term care facilities.

"Historical record" means a record recorded by a clinic or source other than the provider or an immunization not given from the provider's inventory.

"Hospital" means a facility that is licensed under the Hospital Licensing Act.

"Immunization" means treatment of an individual with any vaccine or immunologic drug licensed, approved or authorized for use by the United States Food and Drug Administration (FDA), including emergency use authorization (EUA) agents, or meeting World Health Organization (WHO) requirements, designed for the purpose of producing or enhancing an immune response in

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF EMERGENCY AMENDMENTS

~~prevention against a vaccine-preventable disease the injection of a killed or weakened infectious organism into a human body to prevent disease.~~

"Individual User Agreement" means a signed agreement stating that the Registry user agrees that *information that identifies a patient will not be released to any other person without the written consent of the patient.* (Section 20(d) of the Act)

"Licensed child care center" means a center, private home, or drop-in facility open on a regular basis where children are enrolled for care or education that is licensed by the Illinois Department of Children and Family Services.

"Licensed child-placing agency" means a child welfare agency licensed in Illinois by the Department of Children and Family Services and operating in Illinois as an adoption agency or placing agency.

"Local health authority" means a local health department that is certified by the Department under the Certified Local Health Department Code, having jurisdiction over a particular area, including city, village, township and county boards of health and health departments and the responsible executive officers of those boards, or any person legally authorized to act for the certified local health department. In areas without a certified local health department, the local health authority shall be the Department.

"Locked" means that the individual patient record information is not available to view other than to the original provider or the Department.

"Long term care facility" means a location that is licensed under the Nursing Home Care Act, ~~or~~ the ID/DD Community Care Act, the Assisted Living and Shared Housing Act, the Community Living Facilities Act, the Specialized Mental Health Rehabilitation Act of 2013, or the MC/DD Act.

"Opt out" means that an individual may request the Registry to lock the record so that it is not retrievable by anyone other than the provider site that marked the record as protected.

"Opt-Out Form" means the form that the Department provides, which is accessible from the Registry, *to health care providers who are authorized to administer immunizations and to individuals who request the form.* (Section 15(b) of the Act)

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF EMERGENCY AMENDMENTS

"Patient" means an individual for whom an authorized immunization provider submits immunization data to the Registry.

"Provider site" means a health care provider, certified local health department, elementary or secondary school, licensed child care center, licensed child-placing agency, college or university to which the Department may release information from the Registry.

"Provider site enrollment" means the agreement that is signed by the provider or designee, who assumes responsibility for the proper use and protection of Registry data at the site.

"Registry" means the ~~Illinois Comprehensive Automated Immunization Registry Exchange (I-CARE)~~, an electronic web-based immunization data registry operated by the Department as authorized by the Act.

"School" means a State, county, city or special district system under the jurisdiction of the Illinois State Board of Education.

"Site manager" means the person at the provider site who assumes responsibility for the proper use and protection of the Registry at the site.

"User" means an individual, with approved access to the Registry, who has signed an Individual User Agreement.

"Web portal" means a secure website to access Department programs and documentation, in addition to registering for user accounts to access the available program information.

(Source: Amended by emergency rulemaking at 45 Ill Reg. 16382, effective December 13, 2021 for a maximum of 150 days)

**Section 689.20 Incorporated and Referenced Materials**  
**EMERGENCY**

- a) The following federal statute is referenced in this Part:

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF EMERGENCY AMENDMENTS

Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42  
[U.S.C.](#)~~USC~~ 1320d-2)

- b) The following Illinois statutes are referenced in this Part:
- 1) Hospital Licensing Act [210 ILCS 85]
  - 2) Immunization Data Registry Act [410 ILCS 527]
  - 3) Nursing Home Care Act [210 ILCS 45]
  - 4) ID/DD Community Care Act [210 ILCS 47]
  - 5) Illinois Health Statistics Act [410 ILCS 520]
  - 6) Medical Studies Act [735 ILCS 5/8-2100]
  - 7) [Assisted Living and Shared Housing Act \[210 ILCS 9\]](#)
  - 8) [Community Living Facilities Act \[210 ILCS 35\]](#)
  - 9) [Specialized Mental Health Rehabilitation Act of 2013 \[210 ILCS 49\]](#)
  - 10) [MC/DD Act \[210 ILCS 46\]](#)
- c) The following Illinois administrative rule is referenced in this Part:
- Certified Local Health Department Code (77 Ill. Adm. Code 600)
- d) The following federal regulations are incorporated by reference in this Part:
- Privacy Rule (Standards for Privacy of Individually Identifiable Health Information) of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (45 CFR 164.512(a) and (k)(6) (October 1, 2007), 45 CFR 164.506 (October 15, 2002) and 45 CFR 164.501 (October 15, 2002)).
- e) All incorporations by reference of federal regulations refer to the regulations on the date specified and do not include any later amendments or editions.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF EMERGENCY AMENDMENTS

(Source: Amended by emergency rulemaking at 45 Ill Reg. 16382, effective December 13, 2021 for a maximum of 150 days)

**Section 689.30 Registry Development and Purposes****EMERGENCY**

- a) *The Department may develop and maintain an immunization data registry to collect, store, analyze, release, and report immunization data. (Section 10(a) of the Act)*
- b) The Registry is accessible only to ~~enrolled~~ users who have completed a user agreement and are approved by the Department for access~~predefined roles~~. Enrolled health providers can submit and obtain immunization information for patients, including tracking and recall. Patient information is confidential and available only to authorized users.
- c) *Data in the Registry may be used only for the following purposes:*
  - 1) *To ensure that necessary immunizations are provided and over-immunization is avoided;*
  - 2) *To assess immunization coverage rates;*
  - 3) *To determine areas of under-immunization and other epidemiological research for disease control purposes;*
  - 4) *To document that required immunizations have been provided as required for school or child care admission;*
  - 5) *To determine coverage levels for various subpopulations (geographic, racial and ethnic, and age groups) in this State;*
  - 6) *To accomplish other public health purposes as determined by the Department, including, but not limited to, use of the Registry as a vaccine management system, vaccine tracking system or a vaccine verification system, and the provision of immunization-related announcements, notices and guidelines to Registry users and participants. (Section 10(b) of the Act)*

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF EMERGENCY AMENDMENTS

- d) The Registry may not be used to obtain information necessary to apply for a birth certificate, locate a child, the solicitation of products or services~~engage in any commercial purpose~~, or enroll persons in lawsuits. Authorized users who engage in any prohibited use of the Registry may be denied further access to the Registry, in addition to any other penalties provided by law.

(Source: Amended by emergency rulemaking at 45 Ill Reg. 16382, effective December 13, 2021 for a maximum of 150 days)

**Section 689.40 Immunization Data Provided to the Registry**  
**EMERGENCY**

- a) Both demographic and immunization data shall be reported by providers participating in the Registry~~participants~~. Providers shall report all data elements for all immunizations administered. The following are the minimum data elements that shall be reported to the Registry:
- 1) Patient demographic information shall include, but is not limited to:
    - A) First and last names, and, if applicable, middle name;
    - B) Gender;
    - C) Date of birth;
    - D) Home mailing address;
    - E) Telephone number, if available;
    - F) Race;
    - G) Ethnicity; and
    - H) Any additional information as may be determined by the Department, ~~patient's name, date of birth, gender, telephone number, home address, birth place, and mother's maiden name.~~
  - 2) Patient immunization information shall include, but is not limited to:

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF EMERGENCY AMENDMENTS

- A) Name of immunization;
  - B) Manufacturer of immunization;
  - C) Lot/serial number of immunization;
  - D) Type of immunization administered using industry standards such as vaccine groups, Health Level 7 codes, or current procedural terminology codes;
  - E) Date of administration of immunization;
  - F) Identity of provider site administering immunization;
  - G) If applicable, any contraindications or religious or medical exemptions; and
  - H) Any additional information as may be required by the Department;  
~~the type of immunization administered using industry standards such as vaccine groups, Health Level 7 codes, or current procedural terminology codes; date the immunization was administered and identity of the health care provider who administered the vaccines; manufacturer; trade name; lot number; and, if present, any contraindications or religious or medical exemptions.~~
- b) The current and historical immunization records of all children and adults in Illinois may be included in the Registry without consent. An individual, parent or legal guardian or custodian may have a record locked from other providers at any time by completing the Opt-Out Form, which shall be maintained at the provider site (see Section 689.80).
- c) All active ~~Vaccine for Children (VFC)~~ providers who receive publicly funded vaccine shall use the Registry for submission of their immunization records to the Department. Failure of ~~VFC~~ providers who receive publicly funded vaccine to use the Registry may result in suspension from participation in the publicly funded vaccine ~~VFC~~ program. Participation in the Registry by all other authorized immunization providers is voluntary.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF EMERGENCY AMENDMENTS

- d) Providers shall report all COVID-19 immunizations administered in Illinois to the Registry. Reporting of all other immunizations by providers is voluntary, except as provided in 689.40(c) for publicly funded vaccine providers. ~~*A health care provider, physician's designee, or pharmacist's designee may provide immunization data to be entered into the Registry as prescribed in subsection (c) and for the purposes allowed under the Act and this Part unless the patient or the patient's parent or guardian, if the patient is less than 18 years of age, has completed and filed with the health care provider, physician's designee, or pharmacist's designee a written immunization data exemption form (Opt-Out Form). (Section 15(a) of the Act)*~~
- e) Data shall be provided electronically through the Department's web-based Registry~~I-CARE~~ system or through a secure electronic system integrated with the Registry~~I-CARE~~ via Health Level 7 (HL7) 2.3.1 format or higher.
- f) Users shall provide an acceptable level of data quality, such as correct data fields, data accuracy, and enough information to correctly merge with existing clients. Data shall be reviewed to determine data quality. Any rejected records shall be resolved by the user in a timely way. The Department will suspend system privileges and take any action, as appropriate, including termination for any user that submits inaccurate data.
- g) *The Department will distribute to health care providers, upon request, written information to be disseminated to patients that describes the Registry. The written information will include a description of the Registry and its purpose, as well as the information concerning the opt-out option (see Section 689.80). (Section 15(c) of the Act)*

(Source: Amended by emergency rulemaking at 45 Ill Reg. 16382, effective December 13, 2021 for a maximum of 150 days)

**Section 689.60 Individual User Agreement****EMERGENCY**

- a) Each employee of a provider site who needs access to the Registry shall sign an Individual User Agreement, which also includes a confidentiality statement. Patient-specific or provider-specific information is available only to authorized users.



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF EMERGENCY AMENDMENTS

- b) Site Managers shall notify the Department within 48 hours after any change in status of any Registry users upon termination of employment or redefining of roles.
- c) The Department will revoke the Registry access of a user who misuses information contained in the Registry.
- d) Users are responsible for safeguarding their passwords and User IDs and for protecting the security of the computer when a Registry session is open.
- e) An authorized user who is a patient or a parent or legal guardian may view the patient's immunization information without signing a user agreement by requesting the information from the patient's immunization provider or the Department, or through any public portal or mobile application developed by the Department.

(Source: Amended by emergency rulemaking at 45 Ill Reg. 16382, effective December 13, 2021 for a maximum of 150 days)

**Section 689.70 Confidentiality and Access of Information****EMERGENCY**

- a) *Records maintained as part of the Registry are confidential.* (Section 20(a) of the Act) The Department will maintain the confidentiality of information within the Registry that would identify individual patients.
- b) *The Department may release an individual's confidential information to the individual or the individual's parent or guardian if the individual is less than 18 years of age.* (Section 20(b) of the Act) ~~Immunization records will not be released without a notarized consent form signed by the parent or legal guardian.~~
- c) *Subject to subsection (f4), the Department may release information in the Registry concerning an individual to the following entities if the entity has a provider site* or authorized user *agreement with the Department:*
  - 1) *The immunization data registry of another state;*
  - 2) *A health care provider or a health care provider's designee;*

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF EMERGENCY AMENDMENTS

- 3) *A certified local health department;*
  - 4) *An elementary or secondary school that is attended by the individual;*
  - 5) *A licensed child care center in which the individual is enrolled;*
  - 6) A licensed child placing agency;
  - 7) *A college or university that is attended by the individual;*
  - 8) *The Department of Healthcare and Family Services or a managed care entity contracted with the Department of Healthcare and Family Services to coordinate the provision of medical care to enrollees of the medical assistance program; (Section 20(c) of the Act) and*
  - 9) Health insurance plans not under contract with the Department of Healthcare and Family Services to coordinate the provision of medical care to enrollees of the health insurance plan.
  - 10) Department employees and authorized agents or designees of the Department, including, but not limited to, Registry staff and Department vendors~~their authorized agents (e.g., I-CARE staff).~~
- d) By July 1 of each year, the Department of Healthcare and Family Services shall provide to the Department a list of managed care entities under contract with the Department of Healthcare and Family Services to coordinate the provision of medical care to enrollees of the medical assistance program. The Department of Healthcare and Family Services will provide updates regarding the list of managed care entities to the Department as needed throughout the year.
- e) Health care providers, schools, child care centers, colleges, universities, and health plans provided access to the Registry in subsection (c) will be granted access to information in the Registry for the purposes of verification of immunization status, the coordination of medical care or the provision of medical care to patients, residents, attendees, or enrollees of the institutions. Access to the Registry will not be granted for the verification of immunization status of employees, contractors, or volunteers.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF EMERGENCY AMENDMENTS

- f)** *Before immunization data may be released to an entity listed in subsection (c), the entity must enter into a Confidentiality Agreement with the Department that provides that information that identifies a patient will not be released to any other person without the written consent of the patient. (Section 20(d) of the Act) The Confidentiality Agreement provides that:*
- 1) Only personnel whose assigned duties include functions associated with the immunization of clients can be given access to Registry information.
  - 2) Users who willfully misuse information contained in the Registry will have their access immediately restricted by the Department.
  - 3) Any non-health use of Registry data is prohibited, and no user shall attempt to copy the database or software used to access the Registry without written consent from the Department.
  - 4) Site administrators may enroll users who have been trained in the use of the Registry at the appropriate access level and have signed the Individual User Agreement.
  - 5) Identifying information contained in the Registry will be accessible only to Department personnel, their authorized agents and authorized users (~~CARE staff~~). Requests for data for research purposes that go beyond the scope of the individual provider's patients or the certified local health department area of jurisdiction shall be forwarded to the Department.
  - 6) Registry data identifying clients will not be disclosed to unauthorized individuals, including law enforcement, without the approval of the Department~~Director~~.
- g)** All enrolled sites shall maintain reasonable and appropriate administrative, technical and physical safeguards to ensure the integrity and confidentiality of the Registry information. The Department will conduct periodic assessments on privacy and security policies.
- h)** No person or automated system may access or attempt to access the Registry without approval from the Department.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF EMERGENCY AMENDMENTS

- ~~i~~g) *A person who knowingly, intentionally, or recklessly discloses confidential information contained in the Registry in violation of the Act and this Part commits a Class A Misdemeanor. (Section 25 of the Act)*
- ~~j~~h) *The Department may release summary statistics regarding information in the immunization data registry if the summary statistics do not reveal the identity of an individual. (Section 20(e) of the Act) Aggregate data from which personal identifying data has been removed may be released for the purposes of statistical analysis, research or reporting only after approval by the Department. Release of data, including requests by medical or epidemiologic researchers, will be done in accordance with the Illinois Health Statistics Act upon submission of a written request to the Department.*
- ~~k~~i) Identifiable data may be released to the extent necessary for the treatment, control, investigation ~~or~~and prevention of diseases and conditions dangerous to the public health. Identifiable data can be shared for conditions of public health significance, e.g., as permitted by HIPAA regulations, the Medical Studies Act, and the Health Statistics Act. As described in the Health Statistics Act, a Department-approved Institutional Review Board, or its equivalent on the protection of human subjects in research, will review and approve requests from researchers for individually identifiable data.
- l) The Department will share identifiable immunization data with the Illinois Department of the Lottery and the Office of the Illinois State Treasurer or their designees in relation to any statewide lottery game, raffle or incentive in which immunization status is a requirement for participation in the lottery game, raffle or incentive. Upon submission of the signed Authorization Form, IDPH will release to the Department of the Lottery or to the Treasurer the Authorization Form that includes the individual's name, address, e-mail address, telephone numbers, immunization status, and the individual's public disclosure preference as set out in the Authorization Form (see 11 Ill. Adm. Code 1775.135(c)). Only the minimum information necessary for the intended purpose will be disclosed. The Department will share the information in a manner that protects the confidentiality of the winner's protected health information. A person or institution to whom information is furnished or to whom access to records has been given shall not divulge any part of the records so as to disclose the identity of the person to whom the information or record relates except as it relates to the award of the game, raffle or incentive subject to the public disclosure preference of the winner or the winner's guardian.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF EMERGENCY AMENDMENTS

(Source: Amended by emergency rulemaking at 45 Ill Reg. 16382, effective December 13, 2021 for a maximum of 150 days)

**Section 689.80 Opt-Out Option****EMERGENCY**

- a) *Before entering immunization data into the Registry, authorized immunization providers who provide immunization data into the Registry shall provide the patient or the patient's parent or guardian, if the patient is less than 18 years of age, with a printed Opt-Out Form at least once. (Section 17 of the Act)*
- b) Opt-out~~Op-out~~ forms must include all of the following information:
  - 1) *A description of the Registry and its purpose;*
  - 2) *That the health care provider may report immunization data to the Department to be entered into the Registry;*
  - 3) *That the patient or the patient's parent or guardian, if the patient is less than 18 years of age, has a right to exempt disclosure of immunization data to the Registry and may prevent disclosure by signing an immunization data exemption form;*
  - 4) *That the patient or the patient's parent or guardian, if the patient is less than 18 years of age, may have the individual's information removed from the Registry; and*
  - 5) *Instructions on how to have the information removed. (Section 15(c) of the Act)*
- c) Completed Opt-Out Forms shall be maintained at the provider site, and a copy shall be provided to the patient or the patient's parent or guardian. If any provider subsequently tries to add the same client to the Registry, the provider will be warned that the client's record has been locked, and the provider will be unable to save the record. Only the Department and the provider site that originally submitted the patient record have the ability to view or unlock a locked record.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF EMERGENCY AMENDMENTS

- d) The Opt-Out Form shall also be used to opt the patient back into the Registry if the patient decides to do so. A patient may opt back in the Registry by the completion of an Opt-Out Form at any provider site participating in the Registry.

(Source: Amended by emergency rulemaking at 45 Ill Reg. 16382, effective December 13, 2021 for a maximum of 150 days)

**Section 689.90 Use of Registry for Public Health Emergency Purposes**  
**EMERGENCY**

- a) If an epidemic, or an outbreak of a vaccine-preventable disease or any disease of public health significance occurs, or a public health emergency as may be declared by the Department or the Governor, the Department may access and release data in the Registry without obtaining the prior consent of patients.
- b) The Department may designate additional persons to view Registry information during an epidemic, an outbreak of a vaccine-preventable disease or any disease of public health significance, or a public health emergency as may be declared by the Department or the Governor.
- c) The Department may use the Registry as a vaccination management and tracking system in preparation for an epidemic, an outbreak of a vaccine-preventable disease or any disease of public health significance or a public health emergency and during an epidemic, an outbreak of a vaccine-preventable disease or any disease of public health significance, or a public health emergency and during a public health emergency as may be declared by the Department or the Governor.
- d) The Department may include public health emergency announcements and notices or guidelines on the main screen of the Registry for immediate viewing by the Registry users and participants.

(Source: Amended by emergency rulemaking at 45 Ill Reg. 16382, effective December 13, 2021 for a maximum of 150 days)

**Section 689.100 Registry Digital Platform**  
**EMERGENCY**

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF EMERGENCY AMENDMENTS

- a) The Department may develop a public portal, mobile application, or other digital platform for the purpose of allowing individuals, parents, and legal guardians to access, save, or print immunization records.
- b) All users of any public portal, mobile application or digital platform developed shall be 18 years of age or older and registered with the portal. Registration with the public portal will require the provision of demographic and current contact information. Registration will require the establishment of a password to access the public portal. Additional information may also be requested from the individual as may be needed to match immunization records in the Registry. The information provided at registration shall be an exact match in the Registry before any immunization information will be released through the public portal.
- c) If a record match is found in the Registry, the individual seeking access to the Registry information through the public portal, mobile application, or other digital platform will submit to a multi-factor verification process before any Registry information is shared by the Department, and agree to all terms and conditions associated with the portal, mobile application or digital platform.
- d) If the information provided at the time of registration with the public portal, mobile application, or digital platform is not an exact match with information contained in the Registry or the patient cannot be uniquely identified with a record in the Registry, portal, mobile application, or digital platform access will be declined. If the public portal, mobile application, or other digital platform registration request is declined, the individual may access immunization records through their health care provider or by direct contact with the Department.
- e) The Department will share identifiable immunization data with vendors and software hosts as may be needed for the development, support and maintenance of any public portal, mobile application, or digital platform. Only the minimum information necessary for the intended purpose will be disclosed. The Department will share the information in a manner that protects the confidentiality of the protected health information. A person or institution to whom information is furnished or to whom access to records has been given shall not divulge any part of the records so as to disclose the identity of the person to whom the information or record relates.

(Source: Added by emergency rulemaking at 45 Ill Reg. 16382, effective December 13, 2021 for a maximum of 150 days)

## JOINT COMMITTEE ON ADMINISTRATIVE RULES

## SECOND NOTICES RECEIVED

The following second notices were received during the period of December 7, 2021 through December 13, 2021. These rulemakings are scheduled for the January 11, 2022 meeting. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rulemaking should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield IL 62706.

Second Notice Expires	Agency and Rule	Start of First Notice	JCAR Meeting
01/20/2022	<u>Housing Development Authority</u> , Federal Emergency Rental Assistance Programs (47 Ill. Adm. Code 378)	10/15/2021 45 Ill. Reg. 12941	01/11/2022
01/21/2022	<u>State Board of Education</u> , After-School Grant Programs (23 Ill. Adm. Code 268)	07/10/2021 45 Ill. Reg. 10905	01/11/2022
01/21/2022	<u>Chief Procurement Officer – Higher Education</u> , Chief Procurement Officer for Public Institutions of Higher Education Standard Procurement (44 Ill. Adm. Code 4)	08/06/2021 45 Ill. Reg. 09686	01/11/2022
01/23/2022	<u>Human Services</u> , The Consultative Examination Process (89 Ill. Adm. Code 840)	10/01/2021 45 Ill. Reg. 11795	01/11/2022
01/23/2022	<u>Financial and Professional Regulation</u> , Cannabis Regulation and Tax Act (68 Ill. Adm. Code 1291)	10/22/2021 45 Ill. Reg. 13149	01/11/2022



## OFFICE OF THE ATTORNEY GENERAL

## JANUARY 2022 REGULATORY AGENDA

- a) Part (Heading and Code Citation): Hospital Financial Assistance under the Fair Patient Billing Act (77 Ill. Adm. Code 4500)
- 1) Rulemaking:
- A) Description: The Attorney General intends to propose amendments that will update the federal poverty income guidelines found in Appendix A.
- B) Statutory Authority: Fair Patient Billing Act [210 ILCS 88/27]
- C) Scheduled meeting/hearing dates: No meetings or hearings are scheduled or anticipated at this time.
- D) Date agency anticipates First Notice: February 2022
- E) Effect on small businesses, small municipalities or not for profit corporations: The proposed amendments may affect small municipalities and not for profit corporations that operate hospitals in Illinois by requiring the modification of their forms or software to reflect updated federal poverty income guideline information.
- F) Agency contact person for information:
- David F. Buysse  
Deputy Chief, Public Interest Division  
Office of the Illinois Attorney General  
100 West Randolph Street, 12<sup>th</sup> Floor  
Chicago, Illinois 60601
- 312/814-7236
- G) Related rulemakings and other pertinent information: None

## POLLUTION CONTROL BOARD

## JANUARY 2022 REGULATORY AGENDA

- a) Part (Heading and Code Citation): Definitions and General Provisions (35 Ill. Adm. Code 211)

1) Rulemaking: Docket number R22-9

- A) Description: Section 9.1(e) of the Environmental Protection Act [415 ILCS 5/9.1(e)] requires the Board to adopt rules that are identical-in-substance to exempt from regulation those volatile organic compounds that the United States Environmental Protection Agency (USEPA) has determined are exempt from regulation for ozone due to negligible photochemical reactivity. The Illinois definition of volatile organic material (VOM) lists the federally excluded volatile organic compounds.

USEPA codified the compounds determined by to be exempt from regulation as 40 C.F.R. § 51.100(s). 57 Fed. Reg. 3945 (Feb. 3, 1992). This codified definition includes all the compounds and classes of compounds excluded by USEPA. The Illinois definition of VOM, codified at 35 Ill. Adm. Code 211.7150, corresponds with USEPA's definition.

The Board reserved docket number R22-9 to accommodate any amendments to the 40 CFR 51.100(s) definition of VOM that USEPA may adopt between July 1, 2021 through December 31, 2021. To date, the Board has found no USEPA amendments to the definition of VOM during this period that require Board action.

By about mid-February 2022, the Board will determine whether USEPA rules require any Board action in response. The Board will then propose necessary amendments to the Illinois definition of VOM using the identical-in-substance procedure or dismiss docket R22-9, as appropriate.

Section 9.1(e) requires that the Board complete amendments within one year of the date on which USEPA adopted the earliest action upon which the amendments are based. Assuming USEPA adopted an amendment that will require Board action on the first day of the update period, July 1, 2021, the due date for Board adoption of amendments in docket R22-9 would be July 1, 2022.

## POLLUTION CONTROL BOARD

## JANUARY 2022 REGULATORY AGENDA

To meet a due date of July 1, 2022, the Board would propose amendments and publish a Notice of Proposed Amendments to in the Illinois Register by late March 2022. This would allow the Board to accept public comments on the proposal for 45 days before adopting any amendments. Alternatively, if no amendment to the Illinois definition is needed, the Board will promptly dismiss the reserved docket R22-9.

- B) Statutory authority: Implementing and authorized by Sections 7.2, 9.1(e), and 27 of the Environmental Protection Act [415 ILCS 5/7.2, 9.1(e) & 27].
- C) Scheduled meeting/hearing dates: None scheduled at this time. The Board would propose any amendments according to Sections 27 and 28 of the Act [415 ILCS 5/27 & 28]. The Board will then schedule and conduct at least one public hearing, as required by Section 110(a) of the federal Clean Air Act (42 USC § 7410(a)) for amendment of the Illinois ozone SIP.
- D) Date agency anticipates First Notice: Section 9.1(e) of the Environmental Protection Act [415 ILCS 5/9.1(e)] provides that this rulemaking is not subject to Section 5-35 of the APA [5 ILCS 100/5-35]. For this reason, the rulemaking is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules. Rather, the Board will publish a Notice of Proposed Amendments in the Illinois Register, and it will accept public comments on the proposal for 45 days after the date of publication, as required by section 7.3(b)(1) of the Environmental Protection Act [415 ILCS 5/7.3(b)(1)] and section 5-40 of the Administrative procedure Act [5 ILCS 100/5-40].

For the reasons above, the Board cannot now anticipate an exact date for publication.

- E) Effect on small business, small municipalities, or not-for-profit corporations: This rulemaking may affect any small business, small municipality, or not-for-profit corporation that engages in the emission of a chemical compound that is the subject of a proposed exemption or proposed deletion from the USEPA list of exempted compounds.

## POLLUTION CONTROL BOARD

## JANUARY 2022 REGULATORY AGENDA

- F) Agency contact person for information: Address written comments concerning the substance of the rulemaking, noting docket number R22-9, as follows:

Don A. Brown, Clerk  
Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

Address questions concerning this regulatory agenda, noting docket number R22-9, as follows:

Michael J. McCambridge, Attorney  
Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

312-814-6924  
michael.mccambridge@illinois.gov

- G) Related rulemakings and other pertinent information: No other rulemaking that would affect 35 Ill. Adm. Code 211 is now planned. However, if the Board receives a rulemaking proposal under 415 ILCS 5/27 and 28, it may initiate a rulemaking at any time.

Section 9.1(e) of the Environmental Protection Act [415 ILCS 5/9.1(e)] provides that Title VII of the Act and Section 5-35 of the Administrative Procedure Act (APA) [5 ILCS 100/5-35] shall not apply. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules. Rather, the Board will publish a Notice of Proposed Amendments in the Illinois Register, and it will accept public comments on the proposal for 45 days after the date of publication.

- b) Part (Heading and Code Citation): Air Quality Standards (35 Ill. Adm. Code 243)

- 1) Rulemaking: Docket number R22-16

## POLLUTION CONTROL BOARD

## JANUARY 2022 REGULATORY AGENDA

- A) Description: Section 10(H) to the Environmental Protection Act [415 ILCS 5/10(H)] requires the Board to adopt ambient air quality standards that are identical-in-substance to the National Ambient Air Quality Standards (NAAQS) adopted by the United States Environmental Protection Agency (USEPA) pursuant to section 109 of the federal Clean Air Act (42 USC § 7409).

USEPA codified the primary and secondary NAAQS at 40 CFR 50, including provisions relative to methods for monitoring ambient air quality for the several contaminants (particulate matter, nitrogen oxides, sulfur oxides, ozone, carbon monoxide, and lead). Various other federal regulations relate to aspects of the NAAQS, such as 40 CFR 53 prescribing the procedure for approval of equivalent and reference methods and 40 CFR 81 designating air quality monitoring regions and setting forth their attainment/non-attainment status.

The Board reserved docket number R22-16 to accommodate any amendments to the federal NAAQS that USEPA may adopt between July 1, 2021 and December 31, 2021. To date, the Board has found no USEPA actions relating to the NAAQS during this period that require Board action.

By about mid-February 2022, the Board will determine whether USEPA rules require any Board action in response. The Board will then propose necessary amendments to the Illinois ambient air quality standards using the identical-in-substance procedure or dismiss this docket R22-16, as appropriate.

Section 10(H) requires that the Board complete amendments within one year of the date on which USEPA adopted the earliest action upon which the amendments are based. Assuming USEPA adopted an amendment that will require Board action on the first day of the update period, on July 1, 2021, the due date for Board adoption of amendments in docket R22-14 is July 1, 2022.

To meet a due date of July 1, 2022, the Board would propose amendments and publish a Notice of Proposed Amendments to in the Illinois Register by late March 2022. This would allow the Board to accept public comments on the proposal for 45 days before adopting any amendments.

## POLLUTION CONTROL BOARD

## JANUARY 2022 REGULATORY AGENDA

Alternatively, if no amendment to the Illinois definition is needed, the Board will promptly dismiss the reserved docket R22-16.

- B) Statutory authority: Implementing and authorized by Sections 7.2, 10(H), and 27 of the Environmental Protection Act [415 ILCS 5/7.2, 10(H) & 27].
- C) Scheduled meeting/hearing dates: None scheduled at this time. The Board would propose any amendments according to Sections 27 and 28 of the Act [415 ILCS 5/27 & 28]. The Board may then schedule and conduct at least one public hearing, if required by Section 110(a) of the federal Clean Air Act (42 USC § 7418) for amendment of the Illinois SIP for any air contaminant, should the Board deem such authorized and required.
- D) Date agency anticipates First Notice: Section 10(H) of the Environmental Protection Act [415 ILCS 5/10(H)] provides that this rulemaking is not subject to Section 5-35 of the APA [5 ILCS 100/5-35]. For this reason, the rulemaking is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules. Rather, the Board will publish a Notice of Proposed Amendments in the Illinois Register, and it will accept public comments on the proposal for 45 days after the date of publication, as required by section 7.3(b)(1) of the Environmental Protection Act [415 ILCS 5/7.3(b)(1)] and section 5-40 of the Administrative procedure Act [5 ILCS 100/5-40].

For the reasons above, the Board cannot now anticipate an exact date for publication.

- E) Effect on small business, small municipalities, or not-for-profit corporations: This rulemaking may affect any small business, small municipality, or not-for-profit corporation that engages in the emission of an air contaminant or precursor to an air contaminant that is the subject of an NAAQS.
- F) Agency contact person for information: Address written comments concerning the substance of the rulemaking, noting docket number R22-16, as follows:

Don A. Brown, Clerk

## POLLUTION CONTROL BOARD

## JANUARY 2022 REGULATORY AGENDA

Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

Address questions concerning this regulatory agenda, noting docket number R22-16, as follows:

Michael J. McCambridge, Attorney  
Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

312-814-6924  
michael.mccambridge@illinois.gov

- G) Related rulemakings and other pertinent information: No other rulemaking that would affect 35 Ill. Adm. Code 243 is now planned. However, if the Board receives a rulemaking proposal under 415 ILCS 5/27 and 28, it may initiate a rulemaking at any time.

Section 10(H) of the Environmental Protection Act [415 ILCS 5/10(H)] provides that Title VII of the Act and Section 5-35 of the Administrative Procedure Act (APA) [5 ILCS 100/5-35] shall not apply. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules. Rather, the Board will publish a Notice of Proposed Amendments in the Illinois Register, and it will accept public comments on the proposal for 45 days after the date of publication.

- c) Parts (Headings and Code Citations): Sewer Discharge Criteria (35 Ill. Adm. Code 307); Pretreatment Programs (35 Ill. Adm. Code 310)

- 1) Rulemaking: Docket number R22-15

- A) Description: Section 13.3 of the Environmental Protection Act [415 ILCS 3.3] requires the Board to adopt Illinois rules that are identical-in-substance to wastewater pretreatment rules adopted by the United States Environmental Protection Agency (USEPA) under sections 307(a), (b), and (c) and 402(b)(8) and (b)(9) of the Federal Water Pollution Control

## POLLUTION CONTROL BOARD

## JANUARY 2022 REGULATORY AGENDA

Act (FWPCA) (33 U.S.C. §§ 1317(a), (b), and (c) and 1342(b)(8) and (b)(9)).

The Board has reserved docket number R22-15 to accommodate any amendments to the federal wastewater pretreatment rules, 40 CFR 400 through 499, that USEPA may adopt between July 1, 2021 through December 31, 2021. To date, the Board found no USEPA actions during this period that require Board action.

By about mid-February 2022, the Board will determine whether USEPA rules require any Board action in response. The Board will then propose corresponding amendments to the Illinois wastewater pretreatment regulations using the identical-in-substance procedure or dismiss docket R22-15, as appropriate.

Section 13.3 of the Act requires that the Board complete amendments within one year of the date on which USEPA adopted the earliest action upon which the amendments are based. Assuming USEPA adopted an amendment that will require Board action on the first day of the update period, July 1, 2021, the due date for Board adoption of amendments in docket R22-15 would be July 1, 2022.

To meet a due date of July 1, 2022, the Board would propose amendments and publish a Notice of Proposed Amendments to in the Illinois Register by late March 2022. This would allow the Board to accept public comments on the proposal for 45 days before adopting any amendments. Alternatively, if no amendments to the Illinois wastewater pretreatment rules are needed, the Board will promptly dismiss the reserved docket R22-15.

- B) Statutory authority: Implementing and authorized by Sections 7.2, 13, 13.3, and 27 of the Environmental Protection Act [415 ILCS 5/7.2, 13, 13.3 & 27].
- C) Scheduled meeting/hearing dates: None scheduled at this time. The oard would propose any amendments according to Sections 27 and 28 of the Act [415 ILCS 5/27 & 28]. No hearing is required in identical-in-substance proceedings.



## POLLUTION CONTROL BOARD

## JANUARY 2022 REGULATORY AGENDA

- D) Date agency anticipates First Notice: Section 13.3 of the Environmental Protection Act [415 ILCS 5/13.3] provides that this rulemaking is not subject to Section 5-35 of the APA [5 ILCS 100/5-35]. For this reason, the rulemaking is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules. Rather, the Board will publish a Notice of Proposed Amendments in the Illinois Register, and it will accept public comments on the proposal for 45 days after the date of publication, as required by section 7.3(b)(1) of the Environmental Protection Act [415 ILCS 5/7.3(b)(1)] and section 5-40 of the Administrative procedure Act [5 ILCS 100/5-40].

For the reasons above, the Board cannot now anticipate an exact date for publication.

- E) Effect on small business, small municipalities, or not-for-profit corporations: This rulemaking may affect any small business, small municipality, or not-for-profit corporation that engages in the discharge of pollutants into the collection system of a publicly-owned treatment works that is the subject of any federal amendments.
- F) Agency contact person for information: Address written comments concerning the substance of the rulemaking, noting docket number R22-15, as follows:

Don A. Brown, Clerk  
Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

Address questions concerning this regulatory agenda, noting docket number R22-15, as follows:

Michael J. McCambridge, Attorney  
Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

312-814-6924  
michael.mccambridge@illinois.gov

## POLLUTION CONTROL BOARD

## JANUARY 2022 REGULATORY AGENDA

- G) Related rulemakings and other pertinent information: No other rulemaking that would affect 35 Ill. Adm. Code 307 or 310 is now planned. However, if the Board receives a rulemaking proposal under 415 ILCS 5/27 and 28, it may initiate a rulemaking at any time.

Section 13.3 of the Environmental Protection Act provides that Title VII of the Act and Section 5-35 of the Administrative Procedure Act (APA) [5 ILCS 100/5-35] shall not apply. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules. Rather, the Board will publish a Notice of Proposed Amendments in the Illinois Register, and it will accept public comments on the proposal for 45 days after the date of publication.

- d) Parts (Headings and Code Citations): Introduction (35 Ill. Adm. Code 301); Water Quality Standards (35 Ill. Adm. Code 302); Water Use Designations and Site-Specific Water Quality Standards (35 Ill. Adm. Code 303); Effluent Standards (35 Ill. Adm. Code 304); Monitoring and Reporting (35 Ill. Adm. Code 305); Performance Criteria (35 Ill. Adm. Code 306); Sewer Discharge Criteria (35 Ill. Adm. Code 307); Disposal of Waste from Watercraft (35 Ill. Adm. Code 308); Permits (35 Ill. Adm. Code 309); Pretreatment Programs (35 Ill. Adm. Code 310); Treatment Plant Operator Certification (35 Ill. Adm. Code 312)

- 1) Rulemaking: Docket number R18-23

- A) Description: The Board opened this rulemaking docket to review its water pollution rules and determine which of them are obsolete, repetitive, confusing, or unnecessary. The Illinois Environmental Protection Agency (IEPA) has also proposed to clarify provisions of these rules. On November 4, 2021, the Board proposed for public comment numerous revisions based on both IEPA's proposal and the Board's own review. Both IEPA and the Board intend proposed amendment to be non-substantive in nature.
- B) Statutory Authority: Sections 11(b), 13, 27, and 28 of the Environmental Protection Act [415 ILCS 5/11(b), 13, 27, and 28]

## POLLUTION CONTROL BOARD

## JANUARY 2022 REGULATORY AGENDA

- C) Scheduled meeting/hearing dates: By videoconference between its Chicago and Springfield offices, the Board will conduct one hearing on Thursday, January 6, 2022, and a second on Thursday, February 3, 2022, both beginning at 10:00 AM.
- D) Date agency anticipates First Notice: The Board expects to adopt a first-notice proposal during the first half of calendar year 2022.
- E) Effect on small businesses, small municipalities or not for profit corporations: Because the Board intends its proposed revisions to be non-substantive clarifications, it does not expect those revisions to have a substantive effect on these entities.
- F) Agency contact person for information: Address written comments concerning the substance of the rulemaking, noting docket number R18-23, as follows:

Don A. Brown, Clerk  
Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

Address questions concerning this regulatory agenda, noting docket number R18-23, as follows:

Timothy Fox, Attorney  
Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

312-814-6085  
tim.fox@illinois.gov

Mark Kaminski, Attorney  
Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

312-814-3886

## POLLUTION CONTROL BOARD

## JANUARY 2022 REGULATORY AGENDA

mark.kaminski@illinois.gov

G) Related rulemakings and other pertinent information: None.

e) Part (Heading and Code Citation): Primary Drinking Water Standards (35 Ill. Adm. Code 611)

1) Rulemaking: Docket number R22-10

A) Description: Section 17.5 of the Environmental Protection Act [415 ILCS 5/17.5] requires the Board to adopt Illinois rules that are identical-in-substance to update the Illinois drinking water requirements adopted by the United States Environmental Protection Agency (USEPA) under sections 1412(b), 1414(c), 1417(a), and 1445(a) of the federal Safe Drinking Water Act (SDWA) (42 U.S.C. §§ 300g-1(b), 300g-3(c), 300g-6(a), and 300j-4). The USEPA requirements may amend national primary drinking water regulations (NPDWRs), public notice requirements, restrictions on use of lead in plumbing, and monitoring and recordkeeping requirements.

The Board reserved docket number R22-10 to accommodate any amendments to NPDWRs, 40 CFR 141 through 143, that USEPA may adopt between July 1, 2021 and December 31, 2021. To date, the Board has found no USEPA actions during this period that require Board action.

By about mid-February 2022, the Board will determine whether other USEPA rules require any Board actions required in response. The Board will then propose necessary amendments to the Illinois SDWA primary drinking water regulations using the identical-in-substance procedure or dismiss docket R22-10, as appropriate.

Section 17.5 requires that the Board complete amendments within one year of the date on which USEPA adopted the earliest action upon which the amendments are based. Assuming USEPA adopted an amendment that will require Board action on the first day of the update period, on July 1, 2021, the due date for Board adoption of amendments in docket R22-10 is July 1, 2022.

## POLLUTION CONTROL BOARD

## JANUARY 2022 REGULATORY AGENDA

To meet a due date of July 1, 2022, the Board would propose amendments and publish a Notice of Proposed Amendments to in the Illinois Register by late March 2022. This would allow the Board to accept public comments on the proposal for 45 days before adopting any amendments. Alternatively, if no amendment to the Illinois definition is needed, the Board will promptly dismiss the reserved docket R22-10.

- B) Statutory authority: Implementing and authorized by Sections 17, 17.5, and 27 of the Environmental Protection Act [415 ILCS 5/17, 17.5 & 27].
- C) Scheduled meeting/hearing dates: None scheduled at this time. The Board would propose any amendments according to Sections 27 and 28 of the Act [415 ILCS 5/27 & 28]. No hearing is required in identical-in-substance proceedings.
- D) Date agency anticipates First Notice: Section 17.5 of the Environmental Protection Act [415 ILCS 5/17.5] provides that this rulemaking is not subject to Section 5-35 of the APA [5 ILCS 100/5-35]. For this reason, the rulemaking is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules. Rather, the Board will publish a Notice of Proposed Amendments in the Illinois Register, and it will accept public comments on the proposal for 45 days after the date of publication, as required by section 7.3(b)(1) of the Environmental Protection Act [415 ILCS 5/7.3(b)(1)] and section 5-40 of the Administrative procedure Act [5 ILCS 100/5-40].

For the reasons above, the Board cannot now anticipate an exact date for publication.

- E) Effect on small business, small municipalities, or not-for-profit corporations: This rulemaking may affect any small business, small municipality, or not-for-profit corporation in Illinois that owns or operates a “public water supply,” as defined by Section 3.28 of the Act, i.e., it has at least fifteen service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year, or it is assisting a public water supply to demonstrate compliance.

## POLLUTION CONTROL BOARD

## JANUARY 2022 REGULATORY AGENDA

- F) Agency contact person for information: Address written comments concerning the substance of the rulemaking, noting docket number R22-10, as follows:

Don A. Brown, Clerk  
Pollution Control Board  
100 West Randolph Street Suite 11-500  
Chicago, Illinois 60601

Address questions concerning this regulatory agenda, noting docket number R22-10, as follows:

Michael J. McCambridge, Attorney  
Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

312-814-6924  
michael.mccambridge@illinois.gov

- G) Related rulemakings and other pertinent information: No other rulemaking that would affect 35 Ill. Adm. Code 611 is now planned. However, if the Board receives a rulemaking proposal under 415 ILCS 5/27 and 28, it may initiate a rulemaking at any time.

Section 17.5 of the Environmental Protection Act [415 ILCS 5/17.5] provides that Title VII of the Act and Section 5 of the Administrative Procedure Act (APA) shall not apply. Because this rulemaking is not subject to Section 5 of the APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules. Rather, the Board will publish a Notice of Proposed Amendments in the Illinois Register, and it will accept public comments on the proposal for 45 days after the date of publication.

- f) Parts (Headings and Code Citations): RCRA and UIC Permit Programs (35 Ill. Adm. Code 702); UIC Permit Program (35 Ill. Adm. Code 704); Procedures for Permit Issuance (35 Ill. Adm. Code 705); Hazardous Waste Management System: General (35 Ill. Adm. Code 720); Underground Injection Control Operating Requirements (35 Ill. Adm. Code 730)

## POLLUTION CONTROL BOARD

## JANUARY 2022 REGULATORY AGENDA

1) Rulemaking: Reserved docket number R22-11

- A) Description: Section 13(c) of the Environmental Protection Act [415 ILCS 5/13(c)] requires the Board to adopt Illinois rules that are identical-in-substance to underground injection control (UIC) rules adopted by the United States Environmental Protection Agency (USEPA) under section 1421 of the federal Safe Drinking Water Act (SDWA) (42 U.S.C. § 300h).

The Board reserved docket number R22-11 to accommodate any amendments to the federal UIC regulations, 40 CFR 144 through 147, that USEPA may adopt between July 1, 2021 and December 31, 2021. To date, the Board has found no USEPA amendments to the UIC standards during this period that require Board action.

By about mid-February 2022, the Board will determine whether USEPA rules require any Board action in response. The Board will then propose necessary amendments to the Illinois UIC regulations using the identical-in-substance procedure or dismiss docket R22-11, as appropriate.

Section 13(c) requires that the Board complete amendments within one year of the date on which USEPA adopted the earliest action upon which the amendments are based. Assuming USEPA adopted an amendment that will require Board action on the first day of the update period, on July 1, 2021, the due date for Board adoption of amendments in docket R22-11 would be July 1, 2022.

To meet a due date of July 1, 2022, the Board would propose amendments and publish a Notice of Proposed Amendments to in the Illinois Register by late March 2022. This would allow the Board to accept public comments on the proposal for 45 days before adopting any amendments. Alternatively, if no amendment to the Illinois definition is needed, the Board will promptly dismiss the reserved docket R22-11.

- B) Statutory authority: Implementing and authorized by Sections 7.2, 13(c) and 27 of the Environmental Protection Act [415 ILCS 5/7.2, 13(c) & 27].
- C) Scheduled meeting/hearing dates: None scheduled at this time. The Board would propose any amendments according to Sections 27 and 28 of

## POLLUTION CONTROL BOARD

## JANUARY 2022 REGULATORY AGENDA

the Act [415 ILCS 5/27 & 28]. No hearing is required in identical-in-substance proceedings.

- D) Date agency anticipates First Notice: Section 13(c) of the Environmental Protection Act [415 ILCS 5/22.40(a)] provides that this rulemaking is not subject to Section 5-35 of the APA [5 ILCS 100/5-35]. For this reason, this rulemaking is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules. Rather, the Board will publish a Notice of Proposed Amendments in the Illinois Register, and it will accept public comments on the proposal for 45 days after the date of publication, as required by section 7.3(b)(1) of the Environmental Protection Act [415 ILCS 5/7.3(b)(1)] and section 5-40 of the Administrative procedure Act [5 ILCS 100/5-40].

For the reasons above, the Board cannot now anticipate an exact date for publication.

- E) Effect on small business, small municipalities, or not-for-profit corporations: This rulemaking may affect any small business, small municipality, or not-for-profit corporation in Illinois to the extent the affected entity engages in the underground injection of waste.
- F) Agency contact person for information: Address written comments concerning the substance of the rulemaking, noting docket number R22-11, as follows:

Don A. Brown, Clerk  
Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

Address questions concerning this regulatory agenda, noting docket number R22-11, as follows:

Michael J. McCambridge, Attorney  
Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601



## POLLUTION CONTROL BOARD

## JANUARY 2022 REGULATORY AGENDA

312-814-6924

michael.mccambridge@illinois.gov

- G) Related rulemakings and other pertinent information: No other rulemaking that would affect 35 Ill. Adm. Code 702, 704, 705, 720, or 730 is now planned. However, if the Board receives a rulemaking proposal under 415 ILCS 5/27 and 28, it may initiate a rulemaking at any time.

Section 13(c) of the Environmental Protection Act [415 ILCS 5/13(c)] provides that Title VII of the Act and Section 5 of the Administrative Procedure Act (APA) shall not apply. Because this rulemaking is not subject to Section 5 of the APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules. Rather, the Board will publish a Notice of Proposed Amendments in the Illinois Register, and it will accept public comments on the proposal for 45 days after the date of publication.

- g) Parts (Headings and Code Citations): RCRA AND UIC Permit Programs (35 Ill. Adm. Code 702); RCRA Permit Program (35 Ill. Adm. Code 703); Procedures for Permit Issuance (35 Ill. Adm. Code 705); Hazardous Waste Management System: General (35 Ill. Adm. Code 720); Identification and Listing of Hazardous Waste (35 Ill. Adm. Code 721); Standards Applicable to Generators of Hazardous Waste (35 Ill. Adm. Code 722); Standards Applicable to Transporters of Hazardous Waste (35 Ill. Adm. Code 723); Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities (35 Ill. Adm. Code 724); Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities (35 Ill. Adm. Code 725); Standards for the Management of Specific Hazardous Waste and Specific Types of Hazardous Waste Management Facilities (35 Ill. Adm. Code 726); Land Disposal Restrictions (35 Ill. Adm. Code 728); Standards for Universal Waste Management (35 Ill. Adm. Code 733); Hazardous Waste Injection Restrictions (35 Ill. Adm. Code 738); Standards for the Management of Used Oil (35 Ill. Adm. Code 739)

- 1) Rulemaking: Docket number R22-13

- A) Description: Section 22.4(a) of the Environmental Protection Act [415 ILCS 5/22.4(a)] requires the Board to adopt Illinois rules that are identical-in-substance to hazardous waste management standards adopted by the United States Environmental Protection Agency (USEPA) to implement sections 3001 through 3005 of Subtitle C of the federal

## POLLUTION CONTROL BOARD

## JANUARY 2022 REGULATORY AGENDA

Resource Conservation and Recovery Act (RCRA) (42 U.S.C. §§ 6921 through 6925).

The Board reserved docket number R22-13 to accommodate any amendments to the federal RCRA Subtitle C program, 40 CFR 148, 260 through 270, 273, and 279, that USEPA may adopt between July 1, 2021 and December 31, 2021. To date, the Board has found one set of USEPA actions relating to the RCRA Subtitle C standards during this period that require Board action.

October 1, 2021 (86 Fed. Reg. 54381): USEPA adopted conforming changes to recovery and disposal operation codes relating to hazardous waste imports and exports between Canada and the United States.

By about mid-February 2022, the Board will determine whether USEPA rules require any Board action in response. The Board will then propose necessary amendments to the Illinois federal RCRA Subtitle C-derived hazardous waste regulations using the identical-in-substance procedure or dismiss docket R22-13, as appropriate.

Section 22.4(a) requires that the Board complete amendments within one year of the date on which USEPA adopted the earliest action upon which the amendments are based. USEPA adopted an amendment that will require Board action on October 1, 2021, the due date for Board adoption of amendments in docket R22-13 is October 1, 2022.

To meet a due date of October 1, 2022, the Board would propose amendments and publish a Notice of Proposed Amendments to in the Illinois Register by mid-July 2022. This would allow the Board to accept public comments on the proposal for 45 days before adopting any amendments. Alternatively, if no amendment to the Illinois definition is needed, the Board will promptly dismiss the reserved docket R22-13.

- B) Statutory authority: Implementing and authorized by Sections 7.2, 22.4(a), and 27 of the Environmental Protection Act [415 ILCS 5/7.2, 22.4(a) & 27].
- C) Scheduled meeting/hearing dates: None scheduled at this time. The Board would propose any amendments according to Sections 27 and 28 of

## POLLUTION CONTROL BOARD

## JANUARY 2022 REGULATORY AGENDA

the Act [415 ILCS 5/27 & 28]. No hearing is required in identical-in-substance proceedings.

- D) Date agency anticipates First Notice: Section 22.4(a) of the Environmental Protection Act [415 ILCS 5/22.4(a)] provides that this rulemaking is not subject to Section 5-35 of the APA [5 ILCS 100/5-35]. For this reason, the rulemaking is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules. Rather, the Board will publish a Notice of Proposed Amendments in the Illinois Register, and it will accept public comments on the proposal for 45 days after the date of publication, as required by section 7.3(b)(1) of the Environmental Protection Act [415 ILCS 5/7.3(b)(1)] and section 5-40 of the Administrative procedure Act [5 ILCS 100/5-40].

For the reasons above, the Board cannot now anticipate an exact date for publication.

- E) Effect on small business, small municipalities, or not-for-profit corporations: This rulemaking may affect any small business, small municipality, or not-for-profit corporation that engages in the generation, transportation, treatment, storage, or disposal of hazardous waste.
- F) Agency contact person for information: Address written comments concerning the substance of the rulemaking, noting docket number R22-13, as follows:

Don A. Brown, Clerk  
Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

Address questions concerning this regulatory agenda, noting docket number R22-13, as follows:

Michael J. McCambridge, Attorney  
Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

## POLLUTION CONTROL BOARD

## JANUARY 2022 REGULATORY AGENDA

312-814-6924

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- G) Related rulemakings and other pertinent information: No other rulemaking that would affect 35 Ill. Adm. Code 720 through 728, 733, 738, or 739 is now planned. However, if the Board receives a rulemaking proposal under 415 ILCS 5/27 and 28, it may initiate a rulemaking at any time.

Section 22.4(a) of the Environmental Protection Act [415 ILCS 5/22.4(a)] provides that Title VII of the Act and Section 5-35 of the Administrative Procedure Act (APA) [5 ILCS 100/5-35] shall not apply. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules. Rather, the Board will publish a Notice of Proposed Amendments in the Illinois Register, and it will accept public comments on the proposal for 45 days after the date of publication.

- h) Part (Heading and Code Citation): Underground Storage Tanks (35 Ill. Adm. Code 731)

- 1) Rulemaking: Docket number R22-14

- A) Description: Section 22.4(d) of the Environmental Protection Act [415 ILCS 5/22.4(d)] requires the Board to adopt Illinois rules that are identical-in-substance to underground storage tank (UST) regulations adopted by the United States Environmental Protection Agency (USEPA) pursuant to section 9003 of Subtitle I of the federal Resource Conservation and Recovery Act (RCRA) (42 U.S.C. § 6991b (2017)). The mandate specifically excludes federal amendments relating to the design, construction, installation, general operation, release detection, release reporting, release investigation, release confirmation, out-of-service systems, and closure or financial responsibilities for USTs.

The Board reserved docket number R22-14 to accommodate any amendments to the RCRA Subtitle I regulations, 40 CFR 281 through 283, that USEPA may adopt between July 1, 2021 and December 31, 2021. To date, the Board has found no USEPA amendments to the UST standards during this period that require Board action.

## POLLUTION CONTROL BOARD

## JANUARY 2022 REGULATORY AGENDA

By about mid-February 2022, the Board will determine whether USEPA rules require any Board action in response. The Board will then propose necessary amendments to the Illinois UST regulations using the identical-in-substance procedure or dismiss docket R22-14, as appropriate.

Section 22.4(d) requires that the Board complete amendments within one year of the date on which USEPA adopted the earliest action upon which the amendments are based. Assuming USEPA adopted an amendment that will require Board action on the first day of the update period, on July 1, 2021, the due date for Board adoption of amendments in docket R22-14 is July 1, 2022.

To meet a due date of July 1, 2022, the Board would propose amendments and publish a Notice of Proposed Amendments to in the Illinois Register by late March 2022. This would allow the Board to accept public comments on the proposal for 45 days before adopting any amendments. Alternatively, if no amendment to the Illinois definition is needed, the Board will promptly dismiss the reserved docket R22-14.

- B) Statutory authority: Implementing and authorized by Sections 7.2, 22.4(d), and 27 of the Environmental Protection Act [415 ILCS 5/7.2, 22.4(d) & 27].
- C) Scheduled meeting/hearing dates: None scheduled at this time. The Board would propose any amendments according to Sections 27 and 28 of the Act [415 ILCS 5/27 & 28]. No hearing is required in identical-in-substance proceedings.
- D) Date agency anticipates First Notice: Section 22.4(d) of the Environmental Protection Act [415 ILCS 5/22.4(d)] provides that this rulemaking is not subject to Section 5-35 of the APA [5 ILCS 100/5-35]. For this reason, the rulemaking is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules. Rather, the Board will cause a Notice of Proposed Amendments to appear in the Illinois Register, and it will accept public comments on the proposal for 45 days after the date of publication, as required by section 7.3(b)(1) of the Environmental Protection Act [415 ILCS 5/7.3(b)(1)] and section 5-40 of the Administrative procedure Act [5 ILCS 100/5-40].

## POLLUTION CONTROL BOARD

## JANUARY 2022 REGULATORY AGENDA

For the reasons above, the Board cannot now anticipate an exact date for publication.

- E) Effect on small business, small municipalities, or not-for-profit corporations: This rulemaking may affect any small business, small municipality, or not-for-profit corporation that owns or operates a UST.
- F) Agency contact person for information: Address written comments concerning the substance of the rulemaking, noting docket number R22-14, as follows:

Don A. Brown, Clerk  
Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

Address questions concerning this regulatory agenda, noting docket number R22-14, as follows:

Michael J. McCambridge, Attorney  
Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

312-814-6924  
michael.mccambridge@illinois.gov

- G) Related rulemakings and other pertinent information: No other rulemaking that would affect 35 Ill. Adm. Code 731 is now planned. However, if the Board receives a rulemaking proposal under 415 ILCS 5/27 and 28, it may initiate a rulemaking at any time.

Section 22.4(d) of the Environmental Protection Act [415 ILCS 5/22.4(d)] provides that Title VII of the Act and Section 5-35 of the Administrative Procedure Act (APA) [5 ILCS 100/5-35] shall not apply. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules. Rather, the Board will publish a Notice of

## POLLUTION CONTROL BOARD

## JANUARY 2022 REGULATORY AGENDA

Proposed Amendments in the Illinois Register, and it will accept public comments on the proposal for 45 days after the date of publication.

- i) Parts (Headings and Code Citations): Solid Waste (35 Ill. Adm. Code 807); Solid Waste Disposal: General Provisions (35 Ill. Adm. Code 810); Standards for New Solid Waste Landfills (35 Ill. Adm. Code 811); Information to Be Submitted in a Permit Application (35 Ill. Adm. Code 812); Procedural Requirements for Permitted Landfills (35 Ill. Adm. Code 813); Interim Standards for Existing Landfills and Units (35 Ill. Adm. Code 814); Procedural Requirements for All Landfills Exempt from Permits (35 Ill. Adm. Code 815)

- 1) Rulemaking: Presently reserved docket number R22-12

- A) Description: Section 22.40(a) of the Environmental Protection Act [415 ILCS 5/22.40(a)] requires the Board to adopt Illinois rules that are identical-in-substance to municipal solid waste landfill (MSWLF) rules adopted by the United States Environmental Protection Agency (USEPA) under sections 4004 and 4010 of Subtitle D of the federal Resource Conservation and Recovery Act (RCRA) (42 U.S.C. §§ 6949 and 6949a).

The Board reserved docket number R22-12 to accommodate any amendments to the RCRA Subtitle D MSWLF regulations, 40 CFR 258, that USEPA may adopt between July 1, 2021 through December 31, 2021. To date, the Board has found no USEPA amendments to the MSWLF rules during this period that require Board action.

By about mid-February 2022, the Board will determine whether USEPA rules require any Board action in response. The Board will then propose necessary amendments to the Illinois RCRA Subtitle D MSWLF regulations using the identical-in-substance procedure or dismiss docket R22-12, as appropriate.

Section 22.40(a) requires that the Board complete amendments within one year of the date on which USEPA adopted the earliest action upon which the amendments are based. Assuming USEPA adopted an amendment that will require Board action on the first day of the update period, July 1, 2021, the due date for Board adoption of amendments in docket R22-12 would be July 1, 2022.

## POLLUTION CONTROL BOARD

## JANUARY 2022 REGULATORY AGENDA

To meet a due date of July 1, 2022, the Board would propose amendments and publish a Notice of Proposed Amendments to in the Illinois Register by late March 2022. This would allow the Board to accept public comments on the proposal for 45 days before adopting any amendments. Alternatively, if no amendment to the Illinois definition is needed, the Board will promptly dismiss the reserved docket R22-12.

- B) Statutory authority: Implementing and authorized by Sections 7.2, 22.40(a) and 27 of the Environmental Protection Act [415 ILCS 5/7.2, 22.40(a) & 27].
- C) Scheduled meeting/hearing dates: None scheduled at this time. The Board would propose any amendments according to Sections 27 and 28 of the Act [415 ILCS 5/27 & 28]. No hearing is required in identical-in-substance proceedings.
- D) Date agency anticipates First Notice: Section 22.40(a) of the Environmental Protection Act [415 ILCS 5/22.40(a)] provides that this rulemaking is not subject to Section 5-35 of the APA [5 ILCS 100/5-35]. For this reason, the rulemaking is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules. Rather, the Board will publish a Notice of Proposed Amendments in the Illinois Register, and it will accept public comments on the proposal for 45 days after the date of publication, as required by section 7.3(b)(1) of the Environmental Protection Act [415 ILCS 5/7.3(b)(1)] and section 5-40 of the Administrative procedure Act [5 ILCS 100/5-40].

For the reasons above, the Board cannot now anticipate an exact date for publication.

- E) Effect on small business, small municipalities, or not-for-profit corporations: This rulemaking may affect any small business, small municipality, or not-for-profit that engages in the land disposal of municipal solid waste.
- F) Agency contact person for information: Address written comments concerning the substance of the rulemaking, noting docket number R22-12, as follows:



## POLLUTION CONTROL BOARD

## JANUARY 2022 REGULATORY AGENDA

Don A. Brown, Clerk  
Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

Address questions concerning this regulatory agenda, noting docket number R22-12, as follows:

Michael J. McCambridge, Attorney  
Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

312-814-6924  
michael.mccambridge@illinois.gov

- G) Related rulemakings and other pertinent information: No other rulemaking that would affect 35 Ill. Adm. Code 807 or 810 through 815 is now planned. However, if the Board receives a rulemaking proposal under 415 ILCS 5/27 and 28, it may initiate a rulemaking at any time.

Section 22.40(a) of the Environmental Protection Act [415 ILCS 5/22.40(a)] provides that Title VII of the Act and Section 5-35 of the Administrative Procedure Act (APA) [5 ILCS 100/5-35] shall not apply. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules. Rather, the Board will publish a Notice of Proposed Amendments in the Illinois Register, and it will accept public comments on the proposal for 45 days after the date of publication.

- j) Parts (Headings and Code Citations): Major Stationary Sources Construction and Modification (35 Ill. Adm. Code Part 203); Prevention of Significant Deterioration (35 Ill. Adm. Code Part 204); Toxic Air Contaminants (35 Ill. Adm. Code Part 232)

- 1) Rulemaking: Docket Number R22-17

- A) Description: The Illinois Environmental Regulatory Group (IERG) filed a proposal on August 16, 2021. IERG states that the intention is to update

## POLLUTION CONTROL BOARD

## JANUARY 2022 REGULATORY AGENDA

the rules to make them consistent and current with the Clean Air Act and federal Non-Attainment New Source Review (NA NSR) program.

- B) Statutory Authority: Implementing Sections 9.1 and 10 and authorized by Sections 27 and 28 of the Environmental Protection Act [415 ILCS 5/9.1, 10, 27 & 28].
- C) Scheduled meeting/hearing dates: The first hearing is scheduled for February 17, 2022, and the second hearing is scheduled for April 7, 2022, each by videoconference between Springfield and Chicago.
- D) Date agency anticipates First Notice: The Board anticipates going to first notice in the second half of calendar year 2022.
- E) Effect on small businesses, small municipalities or not for profit corporations: Not expected to have any impact on small businesses, small municipalities, or not for profit corporations. IERG states that the rulemaking is expected to impact major stationary sources and major modifications. IERG also notes that the impact would not differ from any already existing impact imposed by the federal NA NSR program.
- F) Agency contact person for information: Address written comments concerning the substance of the rulemaking, noting docket number R22-17, as follows:

Don A. Brown, Clerk  
Pollution Control Board  
100 West Randolph St., Suite 11-500  
Chicago, Illinois 60601

Address questions concerning this regulatory agenda, noting docket number R22-17, as follows:

Daniel Pauley, Attorney  
Pollution Control Board  
100 West Randolph St., Suite 11-500  
Chicago, Illinois 60601

312-814-6931

## POLLUTION CONTROL BOARD

## JANUARY 2022 REGULATORY AGENDA

Daniel.Pauley@illinois.gov

G) Related rulemakings and other pertinent information: None

k) Parts (Headings and Code Citations): Radiation Hazards (35 Ill. Adm. Code 1000);  
Procedures for Reporting Releases of Radionuclides at Nuclear Power Plants (35 Ill.  
Adm. Code 1010)

1) Rulemaking: Docket number R18-28

- A) Description: The Illinois Environmental Protection Agency (IEPA) filed a proposal on January 10, 2018 to update the Board's rules. The IEPA's filing was prompted by Executive Order 2016-13, which requires each State agency under the jurisdiction of the Governor to review its regulations to determine which of them are outdated, repetitive, confusing, unnecessary, or harmful to the economy. The Board accepted IEPA's proposal and opened eight additional rulemaking dockets-each one limited to non-substantive revisions to a subtitle of the Board's rules-on March 22, 2018. Among them was a docket for Subtitle I, for which IEPA proposed one amendment.

The atomic radiation rules in Part 1000 establish standards for protection against radiological air pollutants associated with materials and activities under licenses issued by the United States Nuclear Regulatory Commission." 35 Ill. Adm. Code 1000.102(a). Part 1010 "prescribes standards for detecting and reporting unpermitted releases of radionuclides from nuclear power plants." 35 Ill. Adm. Code 1010.100. The rules also include definitions and requirements for record submittals and incident notifications. See 35 Ill. Adm. Code 1000, 1010.

- B) Statutory Authority: Implementing Section 25(b) and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/25(b) & 27].
- C) Scheduled meeting/hearing dates: Second hearing scheduled for January 6, 2022, by videoconference between Springfield and Chicago.
- D) Date agency anticipates First Notice: The Board anticipates going to first notice in the second half of calendar year 2022.

## POLLUTION CONTROL BOARD

## JANUARY 2022 REGULATORY AGENDA

- E) Effect on small businesses, small municipalities or not for profit corporations: Not expected to have any impact on small businesses, small municipalities, or not for profit corporations.
- F) Agency contact person for information: Address written comments concerning the substance of the rulemaking, noting docket number R18-28, as follows:

Don A. Brown, Clerk  
Pollution Control Board  
100 West Randolph St., Suite 11-500  
Chicago, Illinois 60601

Address questions concerning this regulatory agenda, noting docket number R18-28, as follows:

Daniel Pauley, Attorney  
Pollution Control Board  
100 West Randolph St., Suite 11-500

312-814-6931  
Daniel.Pauley@illinois.gov

- G) Related rulemakings and other pertinent information: None
- l) Parts (Headings and Code Citations): General Provisions (35 Ill. Adm. Code 501); Permits (35 Ill. Adm. Code 502), Other Agricultural and Silvicultural Activities (35 Ill. Adm. Code 503); Livestock Waste Regulations (35 Ill. Adm. Code 506)
- 1) Rulemaking: Docket number R18-25
- A) Description: The Board opened this rulemaking docket to review its agriculture related water pollution rules and determine which of them are obsolete, repetitive, confusing, or unnecessary. The Illinois Environmental Protection Agency (IEPA) has also proposed to clarify provisions of these rules. On July 29, 2021, the Board proposed for public comment numerous revisions based on both IEPA's proposal and the Board's own review. Both IEPA and the Board intend proposed amendment to be non-substantive in nature.

## POLLUTION CONTROL BOARD

## JANUARY 2022 REGULATORY AGENDA

- B) Statutory Authority: Sections 9, 12, 13, 21, 22 and 27 of the Environmental Protection Act [415 ILCS 5/9, 12, 13, 21, 22, and 27]
- C) Scheduled meeting/hearing dates: The first hearing was held on October 2021. By videoconference between its Chicago and Springfield offices, the Board will conduct a second hearing on Thursday, January 6, 2022 at 9:00 AM.
- D) Date agency anticipates First Notice: The Board expects to adopt a first-notice proposal during the first half of calendar year 2022.
- E) Effect on small businesses, small municipalities or not for profit corporations: Because the Board intends its proposed revisions to be non-substantive clarifications, it does not expect those revisions to have a substantive effect on these entities.
- F) Agency contact person for information: Address written comments concerning the substance of the rulemaking, noting docket number R18-25, as follows:

Don A. Brown, Clerk  
Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

Address questions concerning this regulatory agenda, noting docket number R18-25, as follows:

Mark Kaminski, Attorney  
Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

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- G) Related rulemakings and other pertinent information: None

## STATE UNIVERSITIES RETIREMENT SYSTEM

## JANUARY 2022 REGULATORY AGENDA

a) Part (Heading and Code Citation): Universities Retirement (80 Ill. Adm. Code 1600)1) Rulemaking:A) Description: The System anticipates rulemaking affecting the following:

Amend Section 1600.150 (Group Trust Provisions) to expressly include the Retirement Savings Plan disability benefit program as a participating trust in the Group Trust and to update the reference to the Self-Managed Plan to the Retirement Savings Plan.

Add Section 1600.200 (Definition of Employee) to implement Public Act 99-0897, effective January 1, 2017, regarding the definition of "employee" under Section 15-107 of the Illinois Pension Code.

Amend Section 1600.420 (Making Preliminary Estimated Payments) to include procedures for holding payments when the member has not responded to informational requests, and to suspend the benefit after a period of non-compliance with the request.

Amend Section 1600.450 (Overpayment Recovery) to address de minimis revisions to benefit calculations and deductions for overpayments of less than \$100.

Amend Sections 1600.500 (Administrative Staff Determinations and Rules for Appeal - Nature and Requirements of Formal Hearings) and 1600.510 (Employer-Related Determinations and Rules for Appeal) to consolidate the appeals process for member claims and employer appeals under the Claims Panel.

Promulgate rules to establish acceptable documentary evidence for demographic information such as birth dates and marital status.

Promulgate rules to provide specific definitions and procedures to implement 40 ILCS 5/15-168 (concerning information requests necessary for the proper administration of the System and suspensions for non-compliance by members and penalties for non-compliance by employers).

## STATE UNIVERSITIES RETIREMENT SYSTEM

## JANUARY 2022 REGULATORY AGENDA

Promulgate rules to clarify SURS' benefit forfeiture procedures and refund calculation methods arising from work-related felonies under Section 15-187 of the Illinois Pension Code (40 ILCS 5/15-187).

If the required statutory change is obtained to 40 ILCS 5/15-159, amend Section 1600.700 (Nomination of Candidates) to reduce the number of required petition signatures for contributing members from 400 signatures to 250 signatures with the goal of increasing the diversity and number of applicants to the board.

Amend Section 1600.710 (Petitions) to remove any reference to the required or permissive use of the last four digits of the social security numbers of SURS members on nominating petitions for contributing member candidates and annuitant candidates.

Amend Section 1600.745 (Candidate Informational Communications) to provide clarity for the options available to candidates for sending out SURS approved electronic and/or hard copy campaign communications to voters.

- B) Statutory Authority: Article 15 of the Illinois Pension Code, 40 ILCS 5/15-177.
- C) Scheduled meeting/hearing dates: Written comments may be submitted during the 45-day public comment period following publication of the proposed rule in the *Illinois Register*. No public hearings are anticipated.
- D) Date agency anticipates First Notice: Summer 2021 through Winter 2022
- E) Effect on small businesses, small municipalities or not for profit corporations: None
- F) Agency contact person for information:

Bianca T. Green, General Counsel  
State Universities Retirement System  
1901 Fox Drive  
Champaign, IL 61820

STATE UNIVERSITIES RETIREMENT SYSTEM

JANUARY 2022 REGULATORY AGENDA

(217) 378-8825

Fax: (217) 378-9801

[bgreen@surs.org](mailto:bgreen@surs.org)

- G) Related rulemakings and other pertinent information: Other Amendments may be necessary based on emergent issues.



## EXECUTIVE ORDER

**2021-32**  
**EXECUTIVE ORDER 2021-32**  
**(COVID-19 EXECUTIVE ORDER NO. 96)**

**WHEREAS**, since early March 2020, Illinois has faced a pandemic that has caused extraordinary sickness and loss of life, infecting over 1,884,700, and taking the lives of more than 26,800 residents; and,

**WHEREAS**, as Illinois continues to respond to the public health disaster caused by Coronavirus Disease 2019 (COVID-19), a novel severe acute respiratory illness that spreads rapidly through respiratory transmissions, the burden on residents, healthcare providers, first responders, and governments throughout the State has been unprecedented; and,

**WHEREAS**, protecting the health and safety of Illinoisans is among the most important functions of State government; and,

**WHEREAS**, the Delta variant of the coronavirus is more aggressive and more transmissible than previously circulating strains, and poses new risks in the ongoing effort to stop and slow spread of the virus; and,

**WHEREAS**, the Delta variant may cause more severe disease than prior strains of the virus; and,

**WHEREAS**, the Centers for Disease Control and Prevention (CDC) estimates that the Delta variant now accounts for more than 90 percent of all sequenced coronavirus in the U.S.; and,

**WHEREAS**, the Omicron variant has been classified as a variant of concern that has led public health experts to emphasize the importance of Covid-19 mitigations and precautions; and,

**WHEREAS**, social distancing, face coverings, and other public health precautions have proven to be critical in slowing and stopping the spread of COVID-19; and,

**WHEREAS**, public health guidance advises that minimizing physical interactions between people who are not fully vaccinated and who do not reside in the same household is critical to slowing the spread of COVID-19; and,

**WHEREAS**, the CDC continues to advise that cloth face coverings or masks protect persons who are not fully vaccinated from COVID-19; and,

**WHEREAS**, the CDC advises that schools follow the CDC's guidance for COVID-19 Prevention in K-12 Schools, which recommends universal indoor masking and working with

## EXECUTIVE ORDER

local public health officials to determine the layered prevention strategies needed in their area; and,

**WHEREAS**, the CDC continues to advise that day care providers use COVID-19 prevention strategies, including masking and physical distancing, even after day care providers and their staff are vaccinated; and,

**WHEREAS**, as COVID-19 has spread in Illinois over the course of the Gubernatorial Disaster Proclamations, the circumstances causing a disaster throughout the State have changed and continue to change, making definitive predictions of the course the virus will take over the coming months extremely difficult; and,

**WHEREAS**, in addition to causing the tragic loss of more than 26,800 Illinoisans and negatively impacting the physical health of tens of thousands more, COVID-19 has caused extensive economic loss and continues to threaten the financial welfare of a significant number of individuals and businesses across the nation and the State; and,

**WHEREAS**, many executive agencies in the State continue to focus their limited resources on the ongoing response to the COVID-19 pandemic; and,

**WHEREAS**, the COVID-19 pandemic has required the Illinois Department of Agriculture (IDOA) to address the outbreak's impact on the State's food supply chain through regulation and oversight of meat and poultry facilities and livestock management facilities; and,

**WHEREAS**, the COVID-19 pandemic's disruption to the livestock market has required IDOA to concentrate its resources on working with livestock owners and producers in addressing safe and environmental animal disposal concerns through its oversight and regulation of the Dead Animal Disposal Act; and,

**WHEREAS**, IDOA regulates and investigates many other industries that have been directly impacted by the COVID-19 pandemic including, but not limited to, pesticide applicators, animal shelters, pet shops, and gas stations, and the continued, proper regulation of these industries requires IDOA to commit additional time and resources into creating new procedures for conducting remote investigations and trainings; and,

**WHEREAS**, the COVID-19 pandemic's detrimental impact to IDOA's regulated industries has required IDOA to place additional time and resources into organizing and managing the timely implementation of the Business Interruption Grant Program; and,

## EXECUTIVE ORDER

**WHEREAS**, on December 10, 2021, considering the expected continuing spread of COVID-19 and the ongoing health and economic impacts that that will be felt over the coming month by people across the State, I declared all counties in the State of Illinois as a disaster area; and,

**WHEREAS**, in response to the epidemic emergency and public health emergency described above, I find it necessary to re-issue Executive Orders 2020-04, 2020-09, 2020-11, 2020-12, 2020-15, 2020-20, 2020-21, 2020-23, 2020-24, 2020-27, 2020-30, 2020-36, 2020-40, 2020-45, 2020-50, 2020-68, 2021-03, 2021-12, 2021-18, 2021-22, 2021-24, 2021-25, 2021-28, and 2021-31 and hereby incorporate the WHEREAS clauses of those Executive Orders;

**THEREFORE**, by the powers vested in me as the Governor of the State of Illinois, pursuant to the Illinois Constitution and Sections 7(1), 7(2), 7(3), 7(8), 7(9), and 7(12) of the Illinois Emergency Management Agency Act, 20 ILCS 3305, and consistent with the powers in public health laws, I hereby order the following, effective December 10, 2021:

**Part 1: Re-Issue of Executive Orders.**

Executive Orders 2020-04, 2020-09, 2020-11, 2020-12, 2020-15, 2020-20, 2020-21, 2020-23, 2020-24, 2020-27, 2020-30, 2020-36, 2020-40, 2020-45, 2020-50, 2020-68, 2021-03, 2021-12, 2021-18, 2021-22, 2021-24, 2021-25, 2021-28, and 2021-31 are hereby re-issued as follows:

**Executive Order 2020-04 (Waiver of sick leave requirement for State employees):**

Section 3 of Executive Order 2020-04 is re-issued and extended through **January 8, 2022.**

**Executive Order 2020-09 (Telehealth):**

Sections 9 and 10 of Executive Order 2020-09, as amended by Executive Order 2021-15, are re-issued and extended through **January 8, 2022.**

**Executive Order 2020-11 (Illinois Department of Corrections notification period):**

Section 4 of Executive Order 2020-11 is re-issued and extended through **January 8, 2022.**

**Executive Order 2020-12 (Health care worker background checks; Illinois Department of Juvenile Justice notification period):**

Section 3 of Executive Order 2020-12 is re-issued and extended through **January 8, 2022.**

## EXECUTIVE ORDER

**Executive Order 2020-15 (Suspending provisions of the Illinois School Code):**

Sections 5, 6, 7, 8, and 9 of Executive Order 2020-15 are re-issued and extended through **January 8, 2022.**

**Executive Order 2020-20 (Public assistance requirements):**

Executive Order 2020-20 is re-issued in its entirety and extended through **January 8, 2022.**

**Executive Order 2020-21 (Furlough of Illinois Department of Corrections inmates):**

Executive Order 2020-21 is re-issued in its entirety and extended through **January 8, 2022.**

**Executive Order 2020-23 (Actions by the Illinois Department of Financial and Professional Regulation for licensed professionals engaged in disaster response):**

Executive Order 2020-23 is re-issued in its entirety and extended through **January 8, 2022.**

**Executive Order 2020-24 (Illinois Department of Human Services Forensic Treatment Program):**

Sections 1 and 3 of Executive Order 2020-24 are re-issued and extended through **January 8, 2022.**

**Executive Order 2020-27 (Cadavers testing positive for COVID-19):**

Executive Order 2020-27 is re-issued in its entirety and extended through **January 8, 2022.**

**Executive Order 2020-30 (Expired consular identification documents; electronic filings for the Illinois Human Rights Commission):**

Sections, 1, 4, 5, and 6 of Executive Order 2020-30 are re-issued and extended through **January 8, 2022.**

**Executive Order 2020-36 (Marriage licenses):**

## EXECUTIVE ORDER

Executive Order 2020-36 is re-issued in its entirety and extended through **January 8, 2022**.

**Executive Order 2020-40 (Child Labor Law):**

Sections 2 and 4 of Executive Order 2020-40 are re-issued and extended through **January 8, 2022**.

**Executive Order 2020-45 (Cannabis licenses):**

Executive Order 2020-45 is re-issued in its entirety and shall remain in effect as specified by Executive Order 2020-45.

**Executive Order 2020-50 (Resuming transfers from county jails to Illinois Department of Corrections):**

Executive Order 2020-50 is re-issued in its entirety and extended through **January 8, 2022**.

**Executive Order 2020-68 (Cannabis registry identification card renewals):**

Executive Order 2020-68, as amended by Executive Order 2021-05, is re-issued in its entirety and extended through **January 8, 2022**.

**Executive Order 2021-03 (Regional mitigation metrics):**

Executive Order 2021-03 is re-issued in its entirety and extended through **January 8, 2022**.

**Executive Order 2021-12 (Phase 5 reopening):**

Executive Order 2021-12, as amended by Executive Order 2021-15, is re-issued in its entirety and extended through **January 8, 2022**.

**Executive Order 2021-18 (Mitigation measures):**

Executive Order 2021-18, as amended by Executive Order 2021-19, is re-issued in its entirety and extended through **January 8, 2022**.

**Executive Order 2021-22 (Vaccination and testing requirements):**

## EXECUTIVE ORDER

Executive Order 2021-22, as amended by Executive Order 2021-23 and Executive Order 2021-27, is re-issued in its entirety and extended through **January 8, 2022**.

**Executive Order 2021-24 (School exclusion):**

Executive Order 2021-24, as amended by Executive Order 2021-25, is re-issued in its entirety and extended through **January 8, 2022**.

**Executive Order 2021-25 (Amendment to Executive Order 2021-24):**

Executive Order 2021-25 is re-issued in its entirety and extended through **January 8, 2022**.

**Executive Order 2021-28 (Day care vaccination and testing requirements):**

Executive Order 2021-28, as amended by Executive Order 2021-30, is re-issued in its entirety and extended through **January 8, 2022**.

**Executive Order 2021-31 (Suspending requirements for social workers):**

Executive Order 2021-31 is re-issued in its entirety and extended through **January 8, 2022**.

**Part 2: Savings Clause.** If any provision of this Executive Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

Issued by the Governor December 10, 2021

Filed by the Secretary of State December 10, 2021

## PROCLAMATIONS

**2021-260****Family Caregivers Month**

**WHEREAS**, family caregivers are essential to the health and well-being of Illinoisans of any age, especially those living with Alzheimer's disease and other dementias; and,

**WHEREAS**, more than six million people nationally are living with Alzheimer's disease, including 230,000 in Illinois; and,

**WHEREAS**, through their tireless support and love, family caregivers help thousands of older people and individuals with illnesses and disabilities to live full and meaningful lives; and,

**WHEREAS**, the positive impacts of family caregiving include closer ties to loved ones, increased access to community services, and the peace of mind knowing quality care is being provided; and,

**WHEREAS**, the joy and rewards of caregiving are equally met with mental and physical challenges; and,

**WHEREAS**, it is important to recognize the many contributions of family caregivers and encourage our communities, health providers, employers, and others to support their efforts;

**THEREFORE**, I, JB Pritzker, Governor of the State of Illinois, do hereby proclaim November 2021 as Family Caregivers Month in the State of Illinois and I urge all residents to join me in honoring the strength, passion, and endurance of caregivers.

Issued by the Governor: November 5, 2021

Filed by the Secretary of State: December 8, 2021

**2021-261****Children's Grief Awareness Day**

**WHEREAS**, Children's Grief Awareness Day is rooted in the belief that no grieving person should walk alone; and,

**WHEREAS**, Children's Grief Awareness Day is an opportunity to raise awareness of the painful impact that the death of a loved one has on the life of a child; and,

**WHEREAS**, one out of fifteen children will experience the death of a parent or sibling before they graduate from high school in Illinois; and,

## PROCLAMATIONS

**WHEREAS**, Heartlinks Grief Center is dedicated to serving grieving families, supporting more than 45,000 children and community members since it began in 1997; and,

**WHEREAS**, by providing a safe environment where children can share their grief, feelings, and memories, Heartlinks Grief Center helps children understand that they are not alone through family-based, peer support programming; and,

**WHEREAS**, The State of Illinois is thankful to have the Heartlinks Grief Center in our state and is grateful to the staff and volunteers for creating a community of care for greiving children and families;

**THEREFORE**, I, JB Pritzker, Governor of the State of Illinois, do hereby proclaim November 18<sup>th</sup>, 2021, as Children's Grief Awareness Day.

Issued by the Governor: November 9, 2021

Filed by the Secretary of State: December 8, 2021

**2021-262****National Apprenticeship Week**

**WHEREAS**, Illinois is committed to preparing its workforce to meet the changing demands of today's economy, including recovery from COVID-19, and has demonstrated its commitment to creating pathways for residents to obtain in-demand skills through apprenticeship's earn-while-you-learn model; and,

**WHEREAS**, apprenticeships are a proven career pathway for job seekers of all types and ages, which is why Illinois is focused on growing school-based opportunities as well as more pre-apprenticeship opportunities; and,

**WHEREAS**, Illinois apprentices are employees from the start of their training, learn technical competencies in the classroom and apply them on-the-job with the help of experienced mentors, are appropriately compensated for achieving defined skills gains, and complete their apprenticeships having earned a portable, industry-recognized credential; and,

**WHEREAS**, Illinois recognizes that robust apprenticeship programs provide tangible value to both employers and apprentices, with the potential to increase productivity and retention, improve diversity and inclusion, and reduce recruitment and onboarding costs while providing a pathway to prosperous careers for job seekers; and,



## PROCLAMATIONS

**WHEREAS**, Illinois is broadening access and increasing equity in apprenticeships by expanding apprenticeship and pre-apprenticeship opportunities for underrepresented populations and communities, including but not limited to African American and Hispanic/Latinx, out of school youth, returning residents, youth, individuals with disabilities, women, and older workers; and,

**WHEREAS**, Illinois community colleges provide an array of work-based learning and apprenticeship opportunities for students providing them with the hands on experience, training, and instruction necessary to obtain in-demand jobs; and,

**WHEREAS**, this past year, the State of Illinois has established a first of its kind Office of Illinois Works to diversify and expand access to apprenticeship opportunities within the construction and building trades so that more residents can be a part of the efforts to rebuild our state with capital development projects; and,

**WHEREAS**, with our administration's extensive investments in apprenticeships, combined with federal funding, and with State's Apprenticeship Education Tax Credit, Illinois today applauds the nearly 500 employers offering registered apprenticeships to over 16,000 apprentices in occupations in high-growth and emerging industries; and,

**WHEREAS**, the U.S. Department of Labor's National Apprenticeship Week is an opportunity to celebrate the positive impact apprenticeships have on Illinois youth, adults, businesses, and the Illinois economy as a whole;

**THEREFORE**, I, JB Pritzker, Governor of the State of Illinois, do hereby proclaim November 15-19, 2021, as National Apprenticeship Week in Illinois in support of meaningful career pathways which increase economic prosperity for our state.

Issued by the Governor: November 9, 2021

Filed by the Secretary of State: December 8, 2021

**2021-263****School Psychology Week**

**WHEREAS**, children and youth learn best when they are healthy, supported, and receive an education that enables them to thrive academically, socially, and emotionally; and,

**WHEREAS**, schools can ensure all students are able to learn when they meet the needs of the whole child and provide integrated, multitiered supports; and,

## PROCLAMATIONS

**WHEREAS**, the mental health of students is directly linked to their learning and development, school safety, social and emotional development, prevention, early intervention, and support of culturally diverse student populations; and,

**WHEREAS**, school psychologists are specially trained to foster and deliver a continuum of mental health services and academic supports that lower barriers to teaching and learning; and,

**WHEREAS**, school psychologists assess student- and school-based barriers to learning and individual strengths, utilize data-based decision-making, implement research-driven prevention and intervention strategies, and evaluate outcomes and improve accountability; and,

**WHEREAS**, school psychologists help children thrive by nurturing their individual strengths across both personal and academic endeavors;

**THEREFORE**, I, JB Pritzker, Governor of the State of Illinois, do hereby proclaim November 8-12, 2021, as School Psychology Week in the State of Illinois and commend the vital role school psychologists play in the personal and academic development of our state's children.

Issued by the Governor: November 9, 2021

Filed by the Secretary of State: December 8, 2021

**2021-264****Antibiotics Awareness Week**

**WHEREAS**, the Illinois Department of Public Health seeks to promote the health of the people of Illinois through the prevention and control of disease and injury; and,

**WHEREAS**, antibiotic resistance is one of the most urgent threats to the health of the public; and,

**WHEREAS**, the inappropriate use of antibiotics accelerates the emergence and spread of drug-resistant bacteria; and,

**WHEREAS**, in the United States, each year more than 2.8 million people get infected with antibiotic-resistant bacteria, and more than 35,000 people die as a result; and,

**WHEREAS**, the Illinois Department of Public Health is collaborating with local organizations and stakeholders to help improve the way healthcare professionals prescribe antibiotics, help improve the way people use antibiotics, and to fight antibiotic resistance to ensure that these life-saving drugs will be available for future generations;

## PROCLAMATIONS

**THEREFORE**, I, JB Pritzker, Governor of the State of Illinois, do hereby proclaim the week of November 18<sup>th</sup>-24<sup>th</sup>, 2021, as Antibiotics Awareness Week in Illinois and encourage all Illinoisans to educate themselves, their families, and their communities on how to appropriately use antibiotics.

Issued by the Governor: November 15, 2021

Filed by the Secretary of State: December 8, 2021

**2021-265****Stomach Cancer Awareness Month**

**WHEREAS**, Debbie's Dream Foundation: Curing Stomach Cancer is a non-profit organization dedicated to raising stomach cancer awareness, advancing funding for research, and providing support to patients, families, and caregivers all over the world – pursuing their ultimate goal of making the cure for stomach cancer a reality; and,

**WHEREAS**, in the United States, out of 27,600 new cases of stomach cancer diagnosed a year, 11,010 patients will die in the first year of diagnosis; and,

**WHEREAS**, most stomach cancers are diagnosed at stage IV which has only a five percent, five-year survival rate; and,

**WHEREAS**, in the United States it is estimated that more than 116,525 people are currently living with stomach cancer; and,

**WHEREAS**, stomach cancer has increased in young adults ages 25 to 39 by 70 percent since 1977; and,

**WHEREAS**, overall survival rate for stomach cancer is 32 percent;

**THEREFORE**, I, JB Pritzker, Governor of the State of Illinois, do hereby declare November as Stomach Cancer Awareness Month and offer my thanks to organizations combatting this deadly disease.

Issued by the Governor: November 18, 2021

Filed by the Secretary of State: December 8, 2021

**2021-266**

## PROCLAMATIONS

**Gubernatorial Disaster Proclamation**

**WHEREAS**, since early March 2020, Illinois has faced a pandemic that has caused extraordinary sickness and loss of life, infecting over 1,880,000, and taking the lives of more than 26,800 residents; and,

**WHEREAS**, protecting the health and safety of Illinoisans is among the most important functions of State government; and,

**WHEREAS**, as Illinois continues to respond to the public health disaster caused by Coronavirus Disease 2019 (COVID-19), a novel severe acute respiratory illness that spreads rapidly through respiratory transmissions, the burden on residents, healthcare providers, first responders, and governments throughout the State has been unprecedented; and,

**WHEREAS**, the World Health Organization declared COVID-19 a Public Health Emergency of International Concern on January 30, 2020, and the United States Secretary of Health and Human Services declared that COVID-19 presents a public health emergency on January 27, 2020; and,

**WHEREAS**, on March 11, 2020, the World Health Organization characterized the COVID-19 outbreak as a pandemic, and has now reported more than 267 million confirmed cases of COVID-19 and more than 5.2 million deaths attributable to COVID-19 globally; and,

**WHEREAS**, despite efforts to contain COVID-19, the virus has continued to spread rapidly, resulting in the need for federal and State governments to take significant steps; and,

**WHEREAS**, COVID-19 vaccines are effective at preventing COVID-19 disease, especially severe illness and death, but a proportion of the population remains unvaccinated and some residents, including younger children, cannot yet receive the vaccine; and,

**WHEREAS**, on March 9, 2020, I, JB Pritzker, Governor of Illinois, declared all counties in the State of Illinois as a disaster area in response to the outbreak of COVID-19; and,

**WHEREAS**, on March 13, 2020, the President declared a nationwide emergency pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the "Stafford Act"), covering all states and territories, including Illinois; and,

**WHEREAS**, on March 26, 2020, the President declared a major disaster in Illinois pursuant to Section 401 of the Stafford Act; and,

## PROCLAMATIONS

**WHEREAS**, on April 1, 2020, due to the exponential spread of COVID-19 in Illinois, I declared all counties in the State of Illinois as a disaster area; and,

**WHEREAS**, on April 30, 2020, due to the continued spread of COVID-19 in Illinois, the threatened shortages of hospital beds, ER beds, and ventilators, and the inadequate testing capacity, I declared all counties in the State of Illinois as a disaster area; and,

**WHEREAS**, on May 29, 2020, due to the continued spread of COVID-19 in Illinois, and the resulting health and economic impacts of the virus, and the need to increase testing capacity, I declared all counties in the State of Illinois as a disaster area; and,

**WHEREAS**, on June 26, 2020, due to the further spread of COVID-19 in Illinois, the continuing health and economic impacts of the virus, and the need to continue to increase testing capacity and preserve our progress against the disease, I declared all counties in the State of Illinois as a disaster area; and,

**WHEREAS**, on July 24, 2020, due to the resurgence of COVID-19 in Illinois, the continuing health and economic impacts of the virus, and the need to continue to increase testing capacity and preserve our progress against the disease, I declared all counties in the State of Illinois as a disaster area; and,

**WHEREAS**, on August 21, 2020, due to the resurgence of COVID-19 in Illinois, the continuing health and economic impacts of the virus, and the need to continue to increase testing capacity and preserve our progress against the disease, I declared all counties in the State of Illinois as a disaster area; and,

**WHEREAS**, on September 18, 2020, due to the resurgence of COVID-19 in Illinois, the continuing health and economic impacts of the virus, and the need to continue to increase testing capacity and preserve our progress against the disease, I declared all counties in the State of Illinois as a disaster area; and,

**WHEREAS**, on October 16, 2020, due to the resurgence of COVID-19 in Illinois, the continuing health and economic impacts of the virus, and the need to continue to increase testing capacity and preserve our progress against the disease, I declared all counties in the State of Illinois as a disaster area; and,

**WHEREAS**, on November 13, 2020, due to the increased spread of COVID-19 in Illinois, the continuing health and economic impacts of the virus, and the need to continue to increase testing capacity and preserve our progress against the disease, I declared all counties in the State of Illinois as a disaster area; and,

## PROCLAMATIONS

**WHEREAS**, on December 11, 2020, due to the continued rapid spread of COVID-19 in Illinois, the health and economic impacts of the virus, and the need to continue to increase testing capacity and preserve our progress against the disease, I declared all counties in the State of Illinois as a disaster area; and,

**WHEREAS**, on January 8, 2021, due to the continued rapid spread of COVID-19 in Illinois, and the health and economic impacts of the virus, I declared all counties in the State of Illinois as a disaster area; and,

**WHEREAS**, on February 5, 2021, due to the continued rapid spread of COVID-19 in Illinois, and the health and economic impacts of the virus, I declared all counties in the State of Illinois as a disaster area; and,

**WHEREAS**, on March 5, 2021, due to the continued rapid spread of COVID-19 in Illinois, and the health and economic impacts of the virus, I declared all counties in the State of Illinois as a disaster area; and,

**WHEREAS**, on April 2, 2021, due to the continued rapid spread of COVID-19 in Illinois, and the health and economic impacts of the virus, I declared all counties in the State of Illinois as a disaster area; and,

**WHEREAS**, on April 30, 2021, due to the continued rapid spread of COVID-19 in Illinois, and the health and economic impacts of the virus, I declared all counties in the State of Illinois as a disaster area; and,

**WHEREAS**, on May 28, 2021, due to the continued rapid spread of COVID-19 in Illinois, and the ongoing health and economic impacts of the virus, I declared all counties in the State of Illinois as a disaster area; and,

**WHEREAS**, on June 25, 2021, due to the continued rapid spread of COVID-19 in Illinois, and the ongoing health and economic impacts of the virus, I declared all counties in the State of Illinois as a disaster area; and,

**WHEREAS**, on July 23, 2021, due to the continued rapid spread of COVID-19 in Illinois, and the ongoing health and economic impacts of the virus, I declared all counties in the State of Illinois as a disaster area; and,

**WHEREAS**, on August 20, 2021, due to the continued rapid spread of COVID-19 in Illinois, and the ongoing health and economic impacts of the virus, including the additional risk and harm of the Delta variant of the coronavirus, I declared all counties in the State of Illinois as a disaster area; and,

## PROCLAMATIONS

**WHEREAS**, on September 17, 2021, due to the continued rapid spread of COVID-19 in Illinois, and the ongoing health and economic impacts of the virus, including the additional risk and harm of the Delta variant of the coronavirus, I declared all counties in the State of Illinois as a disaster area; and,

**WHEREAS**, on October 15, 2021, due to the continued rapid spread of COVID-19 in Illinois, and the ongoing health and economic impacts of the virus, including the additional risk and harm of the Delta variant of the coronavirus, I declared all counties in the State of Illinois as a disaster area; and,

**WHEREAS**, on November 12, 2021, due to the continued rapid spread of COVID-19 in Illinois, and the ongoing health and economic impacts of the virus, including the additional risk and harm of the Delta variant of the coronavirus, I declared all counties in the State of Illinois as a disaster area; and,

**WHEREAS**, as circumstances surrounding COVID-19 have evolved and new evidence emerges, there have been frequent changes in information and public health guidance; and,

**WHEREAS**, the unprecedented nature of COVID-19, including the health consequences it has on not just the respiratory system but the heart, brain, kidneys, and the body's immune response, has made the virus's effects and its path difficult to predict; and,

**WHEREAS**, the Delta variant is more aggressive and more transmissible than previously circulating strains, and poses new risks in the ongoing effort to stop and slow spread of the virus; and,

**WHEREAS**, the Delta variant may cause more severe disease than prior strains of the virus; and,

**WHEREAS**, the Centers for Disease Control and Prevention (CDC) estimates that the Delta variant now accounts for nearly all sequenced coronavirus in the U.S.; and,

**WHEREAS**, the Omicron variant has been classified as a variant of concern that has led public health experts to emphasize the importance of Covid-19 mitigations and precautions; and,

**WHEREAS**, social distancing, face coverings, and other public health precautions have proven to be critical in slowing and stopping the spread of COVID-19; and,

## PROCLAMATIONS

**WHEREAS**, the Centers for Disease Control and Prevention ("CDC") has issued guidance for fully vaccinated people,<sup>9</sup> indicating that they can conduct numerous activities outdoors without wearing a mask or staying 6 feet apart, while recommending wearing a mask indoors in public in areas of substantial or high transmission, as well as where required by federal, state, local, tribal, or territorial laws, rules, and regulations, including local business and workplace guidance; and,

**WHEREAS**, the CDC continues to advise that cloth face coverings or masks protect persons who are not fully vaccinated from COVID-19; and,

**WHEREAS**, the CDC advises that schools follow the CDC's guidance for COVID-19 Prevention in K-12 Schools which recommends universal masking and working with local public health officials to determine the layered prevention strategies needed in their area; and,

**WHEREAS**, the CDC continues to advise that day care providers continue to use COVID-19 prevention strategies, including masking and physical distancing, even after day care providers and their staff are vaccinated; and

**WHEREAS**, some people infected by the virus remain asymptomatic but nonetheless may spread it to others; and,

**WHEREAS**, public health guidance advises that minimizing physical interactions between people who are not fully vaccinated and who do not reside in the same household is critical to slowing the spread of COVID-19; and,

**WHEREAS**, as COVID-19 has spread in Illinois over the course of the Gubernatorial Disaster Proclamations, the circumstances causing a disaster throughout the State have changed and continue to change, making definitive predictions of the course the virus will take over the coming months extremely difficult; and,

**WHEREAS**, at the time I issued the first Gubernatorial Disaster Proclamation, there were 11 confirmed cases of COVID-19 in one Illinois county; and,

**WHEREAS**, as of today, there have been over 1,880,000 confirmed cases of COVID-19 in all 102 Illinois counties; and,

**WHEREAS**, the first death attributed to COVID-19 in Illinois was announced on March 17, 2020; and,

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<sup>9</sup> Individuals are considered fully vaccinated 2 weeks after their second dose in a 2-dose series, such as the Pfizer or Moderna vaccines, or 2 weeks after a single-dose vaccine, such as Johnson & Johnson's Janssen vaccine. Individuals who do not meet these requirements, regardless of age, are not considered fully vaccinated.



## PROCLAMATIONS

**WHEREAS**, as of today, more than 26,800 residents of Illinois have died due to COVID-19; and,

**WHEREAS**, from the outset, studies have suggested that for every confirmed case there are many more unknown cases, some of which are asymptomatic individuals who can pass the virus to others without knowing; and,

**WHEREAS**, the number of new COVID-19 cases in Illinois has increased significantly recently, and the virus continues to infect too many individuals and claim the lives of too many Illinoisans each day; and,

**WHEREAS**, the COVID-19 pandemic is not limited to the most populous counties, and all regions of the State continue to face significant COVID-19 risk; and,

**WHEREAS**, without precautions COVID-19 can spread exponentially, even in less populous areas; and,

**WHEREAS**, the U.S. has had nearly 50 million total cases and more than 790,000 deaths; and,

**WHEREAS**, COVID-19 has claimed the lives of and continues to impact the health of Black and Hispanic Illinoisans at a disproportionately high rate – magnifying significant health disparities and inequities; and,

**WHEREAS**, the Illinois Department of Public Health activated its Illinois Emergency Operations Plan and its Emergency Support Function 8 Plan to coordinate emergency response efforts by hospitals, local health departments, and emergency management systems in order to avoid a surge in the use of hospital resources and capacity; and,

**WHEREAS**, as the virus has progressed through Illinois, the crisis facing the State continues to develop and requires an evolving response to ensure hospitals, health care professionals and first responders are able to meet the health care needs of all Illinoisans and in a manner consistent with CDC guidance that continues to be updated; and,

**WHEREAS**, in order to ensure that health care professionals, first responders, hospitals and other facilities are able to meet the health care needs of all residents of Illinois, the State must have critical supplies, including PPE, such as masks, face shields, gowns, and gloves; and,

**WHEREAS**, the State of Illinois maintains a stockpile that supports the existing PPE supply chains and stocks at various healthcare facilities; and,

## PROCLAMATIONS

**WHEREAS**, while the State continues to make every effort to ensure an adequate supply of PPE, if those procurement efforts are disrupted or Illinois experiences a surge in COVID-19 cases, the State may face a life-threatening shortage of critical supplies for health care workers and first responders; and,

**WHEREAS**, Illinois continues to use a significant number of hospital beds and ICU beds; and, if COVID-19 cases surge, the State could face a shortage of critical health care resources; and,

**WHEREAS**, there are parts of the country in which there are few if any available ICU beds as a result of the Delta variant, and many parts of Illinois have a diminishing number of available ICU beds as a result of the Delta variant; and,

**WHEREAS**, Illinois now has tested more than 40 million total specimens for COVID-19; and,

**WHEREAS**, in addition to causing the tragic loss of more than 26,800 Illinoisans and wreaking havoc on the physical health of tens of thousands more, COVID-19 has caused extensive economic loss and continues to threaten the financial welfare of a significant number of individuals and businesses across the nation and the State; and,

**WHEREAS**, nationwide, more than 80 million people have filed unemployment claims since the start of the pandemic; and,

**WHEREAS**, the Illinois Department of Employment Security is responding to the economic crisis in a number of ways, including through the Pandemic Unemployment Assistance program; and,

**WHEREAS**, the Department of Commerce and Economic Opportunity is working to address the economic crisis, including through assistance programs such as the Business Interruption Grants Program for businesses that experienced a limited ability to operate due to COVID-19 related closures; and,

**WHEREAS**, many executive agencies in the State continue to focus significant resources on the ongoing response to the COVID-19 pandemic; and,

**WHEREAS**, many State agencies will have a role in administering American Rescue Plan and Coronavirus State and Local Fiscal Recovery Funds over the coming months; and,

**WHEREAS**, the COVID-19 pandemic has required the Illinois Department of Agriculture (IDOA) to address the outbreak's impact on the State's food supply chain through regulation and oversight of meat and poultry facilities and livestock management facilities; and

## PROCLAMATIONS

**WHEREAS**, the COVID-19 pandemic's disruption to the livestock market has required IDOA to concentrate its resources on working with livestock owners and producers in addressing safe and environmental animal disposal concerns through its oversight and regulation of the Dead Animal Disposal Act; and

**WHEREAS**, IDOA regulates and investigates many other industries that have been directly impacted by the COVID-19 pandemic including, but not limited to, pesticide applicators, animal shelters, pet shops, and gas stations, and the continued, proper regulation of these industries requires IDOA to commit additional time and resources into creating new procedures for conducting remote investigations and trainings; and

**WHEREAS**, the COVID-19 pandemic's detrimental impact to IDOA's regulated industries has required IDOA to place additional time and resources into organizing and managing the timely implementation of the Business Interruption Grant Program; and

**WHEREAS**, the economic loss and insecurity caused by COVID-19 threatens the viability of business and the access to housing, medical care, food, and other critical resources that directly impact the health and safety of residents; and,

**WHEREAS**, COVID-19 also has been extraordinarily disruptive to schools, and it is among the highest priorities of the State to ensure that students are able to obtain a quality education and that schools are able to provide an environment that is safe for students, teachers, and the community; and,

**WHEREAS**, based on the foregoing facts, and considering the rapid spread of COVID-19 and the ongoing health and economic impacts that will be felt over the coming month by people across the State, the current circumstances in Illinois surrounding the spread of COVID-19 constitute an epidemic emergency and a public health emergency under Section 4 of the Illinois Emergency Management Agency Act; and,

**WHEREAS**, based on the foregoing, the continuing burden on hospital resources, the ongoing potential that the State could face shortages of these resources in the event of a surge in infections, and the critical need to increase the purchase and distribution of PPE as well as to continue to expand COVID-19 testing capacity constitute a public health emergency under Section 4 of the Illinois Emergency Management Agency Act; and,

**WHEREAS**, it is the policy of the State of Illinois to be prepared to address any disasters and, therefore, it is necessary and appropriate to make additional State resources available to ensure that that our healthcare delivery system is capable of serving those who are sick and that Illinoisans remain safe and secure and able to obtain medical care; and,

## PROCLAMATIONS

**WHEREAS**, this proclamation will assist the State in facilitating economic recovery for individuals and businesses in an effort to prevent further devastating consequences from the economic instability COVID-19 has caused; and,

**WHEREAS**, this proclamation will assist Illinois agencies in coordinating State and Federal resources, including materials needed to test for COVID-19, personal protective equipment, and medicines, in an effort to support the State responses as well as the responses of local governments to the present public health emergency; and,

**WHEREAS**, this proclamation will assist Illinois agencies in coordinating State and Federal recovery funds; and,

**WHEREAS**, these conditions provide legal justification under Section 7 of the Illinois Emergency Management Agency Act for the new issuance of a proclamation of disaster; and,

**WHEREAS**, the Illinois Constitution, in Article V, Section 8, provides that "the Governor shall have the supreme executive power, and shall be responsible for the faithful execution of the laws," and states, in the Preamble, that a central purpose of the Illinois Constitution is "provide for the health, safety, and welfare of the people";

**NOW, THEREFORE**, in the interest of aiding the people of Illinois and the local governments responsible for ensuring public health and safety, I, JB Pritzker, Governor of the State of Illinois, hereby proclaim as follows:

**Section 1.** Pursuant to the provisions of Section 7 of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7, I find that a disaster exists within the State of Illinois and specifically declare all counties in the State of Illinois as a disaster area. The proclamation authorizes the exercise of all of the emergency powers provided in Section 7 of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7, including but not limited to those specific emergency powers set forth below.

**Section 2.** The Illinois Department of Public Health and the Illinois Emergency Management Agency are directed to coordinate with each other with respect to planning for and responding to the present public health emergency.

**Section 3.** The Illinois Department of Public Health is further directed to cooperate with the Governor, other State agencies and local authorities, including local public health authorities, in the development and implementation of strategies and plans to protect the public health in connection with the present public health emergency.

## PROCLAMATIONS

**Section 4.** The Illinois Emergency Management Agency is directed to implement the State Emergency Operations Plan to coordinate State resources to support local governments in disaster response and recovery operations.

**Section 5.** To aid with emergency purchases necessary for response and other emergency powers as authorized by the Illinois Emergency Management Agency Act, the provisions of the Illinois Procurement Code that would in any way prevent, hinder or delay necessary action in coping with the disaster are suspended to the extent they are not required by federal law. If necessary, and in accordance with Section 7(1) of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7(1), the Governor may take appropriate executive action to suspend additional statutes, orders, rules, and regulations.

**Section 6.** Pursuant to Section 7(3) of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7(3), this proclamation activates the Governor's authority, as necessary, to transfer the direction, personnel or functions of State departments and agencies or units thereof for the purpose of performing or facilitating emergency response programs.

**Section 7.** The Illinois Department of Public Health, Illinois Department of Insurance and the Illinois Department of Healthcare and Family Services are directed to recommend, and, as appropriate, take necessary actions to ensure expanded access to testing for COVID-19 and that consumers do not face financial barriers in accessing diagnostic testing and treatment services for COVID-19.

**Section 8.** The Illinois State Board of Education is directed to recommend, and, as appropriate, take necessary actions to address any impact to learning associated with the present public health emergency and to continue to alleviate any barriers to the use of remote learning during the effect of this proclamation that exist in the Illinois School Code, 105 ILCS 5/1-1 et. seq.

**Section 9.** All State agencies are directed to cooperate with the Governor, other State agencies and local authorities in the development and implementation of strategies and plans to cope with and recover from the economic impact of the present public health emergency.

**Section 10.** Pursuant to Section 7(14) of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7(14), increases in the selling price of goods or services, including medical supplies, protective equipment, medications and other commodities intended to assist in the prevention of or treatment and recovery of COVID-19, shall be prohibited in the State of Illinois while this proclamation is in effect.

**Section 11.** This proclamation can facilitate requests for federal emergency and/or disaster assistance if a complete and comprehensive assessment of damage indicates that effective recovery is beyond the capabilities of the State and affected local governments.

## PROCLAMATIONS

**Section 12.** This proclamation shall be effective immediately and remain in effect for 30 days.

Issued by the Governor December 10, 2021

Filed by the Secretary of State December 10, 2021

**2021-267****GUBERNATORIAL DISASTER PROCLAMATION**

**WHEREAS**, on December 10, 2021, waves of powerful storms, including several tornadoes, buffeted the southern and central portions of Illinois, causing significant damage across multiple counties; and

**WHEREAS**, the storms started in the evening in the St. Louis area, where 70 mph winds were reported, and proceeded from there in a northeasterly direction; and

**WHEREAS**, in Madison County, a large tornado was reported just after 8:30 p.m., one of several radar-confirmed tornadoes in the region, and a private distribution center collapsed, trapping employees inside and ultimately resulting in at least six fatalities; and

**WHEREAS**, in Shelby County, the National Weather Service reports that a radar-confirmed tornado was located near Lakewood on the evening of December 10, 2021, and another tornado was confirmed in Gays in Moultrie County; and

**WHEREAS**, downed trees, branches, powerlines and other damages resulting from tornadoes, high winds, or other severe weather on December 10, 2021, also have been reported in Bond, Cass, Champaign, Coles, Edgar, Effingham, Fayette, Ford, Greene, Grundy, Iroquois, Jackson, Jersey, Kankakee, Lawrence, Livingston, Logan, Macon, Macoupin, Montgomery, Morgan, Pike, Sangamon, Tazewell, and Woodford counties; and

**WHEREAS**, based on reports received by the Illinois Emergency Management Agency, local resources and capabilities have been exhausted and State resources are needed to respond to and recover from the effects of the severe thunderstorms and high winds; and

**WHEREAS**, these conditions provide legal justification under section 7 of the Illinois Emergency Management Act for the issuance of a proclamation of disaster; and

**WHEREAS**, the Illinois Constitution, in Article V, Section 8, provides that "the Governor shall have the supreme executive power, and shall be responsible for the faithful execution of the

## PROCLAMATIONS

laws," and states, in the Preamble, that a central purpose of the Illinois Constitution is to "provide for the health, safety, and welfare of the people";

**NOW, THEREFORE**, in the interest of aiding the people of Illinois and the local governments responsible for ensuring public health and safety, I, JB Pritzker, Governor of the State of Illinois, hereby proclaim as follows:

**Section 1.** Pursuant to the provisions of Section 7 of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7, I find that a disaster exists within the State of Illinois and specifically declare the counties of Bond, Cass, Champaign, Coles, Edgar, Effingham, Fayette, Ford, Greene, Grundy, Iroquois, Jackson, Jersey, Kankakee, Lawrence, Livingston, Logan, Macon, Macoupin, Madison, Montgomery, Morgan, Moultrie, Pike, Sangamon, Shelby, Tazewell, and Woodford as disaster areas. The proclamation authorizes the exercise of all of the emergency powers provided in Section 7 of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7, including but not limited those specific emergency powers set forth below.

**Section 2.** The Illinois Emergency Management Agency is directed to implement the State Emergency Operations Plan to coordinate State resources to support local governments in disaster response and recovery operations.

**Section 3.** To aid with emergency purchases necessary for response and other emergency powers as authorized by the Illinois Emergency Management Agency Act, the provisions of the Illinois Procurement Code that would in any way prevent, hinder or delay necessary action in coping with the disaster are suspended to the extent they are not required by federal law. If necessary, and in accordance with Section 7(1) of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7(1), the Governor may take appropriate action to suspend additional statutes, orders, rules, and regulations.

**Section 4:** This proclamation can facilitate a request for Federal disaster assistance if a complete and comprehensive assessment of damage indicates that effective recovery is beyond the capabilities of the State and affected local governments.

**Section 5:** This proclamation shall be effective immediately and remain in effect for 30 days.

Date: December 12, 2021

Filed: December 13, 2021

## **ILLINOIS ADMINISTRATIVE CODE**

### **Issue Index - With Effective Dates**

Rules acted upon in Volume 45, Issue 52 are listed in the Issues Index by Title number, Part number, Volume and Issue. Inquiries about the Issue Index may be directed to the Administrative Code Division at (217) 782-7017/18.

#### **PROPOSED RULES**

41 - 2120	.....	16118
83 - 466	.....	16127
89 - 118	.....	16128
50 - 2015	.....	16140
50 - 2915	.....	16150
11 - 100	.....	16154
77 - 100	.....	16176
77 - 245	.....	16210
77 - 545	.....	16259
77 - 955	.....	16292
20 - 1230	.....	16315

#### **ADOPTED RULES**

68 - 1291	12/7/2021 .....	16320
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#### **EMERGENCY RULES**

83 - 466	12/14/2021 .....	16330
83 - 475	12/14/2021 .....	16338
77 - 689	12/13/2021 .....	16382

#### **EXECUTIVE ORDERS AND PROCLAMATIONS**

21 - 32	12/10/2021 .....	16433
21 - 260	11/5/2021 .....	16439
21 - 261	11/9/2021 .....	16439
21 - 262	11/9/2021 .....	16440
21 - 263	11/9/2021 .....	16441
21 - 264	11/15/2021 .....	16442
21 - 265	11/18/2021 .....	16443
21 - 266	12/10/2021 .....	16443
21 - 267	12/12/2021 .....	16454

#### **REGULATORY AGENDA**

77 - 4500	.....	16401
35 - 211	.....	16402
80 - 1600	.....	16430